

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

3 KEITH COLE, ET AL * 4:14-CV-01698
*
4 VS. * 9:41 A.M.
*
5 BRYAN COLLIER, ET AL * JUNE 19, 2017

6 INJUNCTION HEARING
7 BEFORE THE HONORABLE KEITH P. ELLISON
Day 1 of 9 Days

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1 **PROCEEDINGS**

2 THE COURT: Good morning and welcome. Have you
3 discussed amongst yourselves how you wish to proceed this
4 morning? No? Does anybody want to make an opening
09:41:04 5 statement, or shall we just go directly to presentation of
6 evidence?

7 MR. EDWARDS: I think that going directly to the
8 presentation of evidence would be fine with plaintiffs.

9 THE COURT: Is that agreeable with everybody?

09:41:15 10 MR. McCARTY: Your Honor, that's agreeable with
11 TDCJ.

12 THE COURT: Okay. Let's do that. Do you want to
13 call your first witness?

14 MR. MEDLOCK: Plaintiffs call Richard King, Your
09:41:25 15 Honor.

16 THE COURT: Mr. King, if you'd make your way up
17 here, sir. We're going to have you in the seat nearest
18 me. Well, yeah, I don't know. You've got an obstacle
19 course, don't you?

09:41:41 20 MR. MEDLOCK: Your Honor, if I could examine the
21 witness from the desk table.

22 THE COURT: That's fine.

23 Mr. King, if you want to -- before you take your seat,
24 if you'll listen to the oath. You don't have to raise
09:42:01 25 your hand, but if you will listen to the oath and answer

1 "I do" if you can answer affirmatively.

2 (Witness sworn by the case manager.)

3 THE WITNESS: I do.

4 THE COURT: Okay. Please have a seat and try to

09:42:10

5 speak directly into that mic.

6 You may inquire.

7 MR. MEDLOCK: Thank you, Your Honor.

8 **RICHARD KING,**

9 having been first duly sworn, testified as follows:

09:42:24

10 **DIRECT EXAMINATION**

11 BY MR. MEDLOCK:

12 **Q.** Can you hear me, Mr. King?

13 **A.** Yes.

14 **Q.** All right. Will you please state your name for the

09:42:31

15 record, sir?

16 **A.** Richard King.

17 **Q.** And how old are you, sir?

18 **A.** 71.

19 **Q.** And where are you from originally?

09:42:39

20 **A.** Nacogdoches, Texas.

21 **Q.** What did you do for a living before you were sent to
22 prison?

23 **A.** Engineer for Southern Pacific Railroad.

24 **Q.** Before you came to prison, did you ever live in an

09:42:50

25 environment without air-conditioning?

1 **A.** No.

2 **Q.** How long have you been in TDCJ custody, sir?

3 **A.** Right at 28 years.

4 **Q.** And how long have you been living at the Pack Unit?

09:43:03

5 **A.** Since July of '11.

6 **Q.** That's July of 2011?

7 **A.** Right.

8 **Q.** And do you have a job at the Pack Unit?

9 **A.** Medical Squad 1.

09:43:18

10 **Q.** Would you describe for the Court what being on Medical
11 Squad 1 means.

12 **A.** It's kind of -- they're like for people that's not
13 able to work full-time. They call us out occasionally to
14 shuck corn, shell peas, just real light duty.

09:43:41

15 **Q.** And do you have an understanding of why your job
16 assignment is Medical Squad 1?

17 **A.** Yes. I just -- when I got to the Pack Unit, I was
18 just out of a wheelchair about six or eight months; and I
19 was medically unassigned at first. And then, they changed
09:43:59 20 it and put me in Medical Squad 1.

21 **Q.** Have you ever actually done any work on Medical
22 Squad 1?

23 **A.** No.

09:44:09

24 **Q.** Why were you in a wheelchair when you arrived at the
25 Pack Unit?

1 **A.** I had a viral infection attack my nerves going down to
2 my legs, and I was paralyzed from the waist down for about
3 five or six months.

4 **Q.** Do you still feel the effects of that condition today?

09:44:24

5 **A.** Yes.

6 **Q.** Describe for the Court what that is like.

7 **A.** Well, the doctors told me that I had so much nerve
8 damage, I would probably lose 25, 30 percent use of my
9 legs; and that's holding true. I can't go up and down

09:44:42

10 stairs very well. I just -- I can't make sudden
11 movements.

12 **Q.** Which dormitory do you live in at the Pack Unit, sir?

13 **A.** E building, 20 dorm.

14 **Q.** Is that the expansion cellblock?

09:45:00

15 **A.** Yes.

16 **Q.** And I understand that the expansion cellblock has an
17 upstairs and a downstairs area; is that right?

18 **A.** Yes. For the housing, yes.

19 **Q.** Do you live upstairs or downstairs?

09:45:16

20 **A.** Downstairs.

21 **Q.** Now, does your dormitory have showers in it?

22 **A.** Yes.

23 **Q.** And how -- are any of those cold-water showers during
24 the summer?

09:45:26

25 **A.** Yes. We have one cold-water shower.

1 Q. And when was the last time you used that cold-water
2 shower?

3 A. Yesterday.

4 Q. Now, sir, you mentioned the viral infection that you
5 had a few years ago that's limited the use of your legs.
6 Do you have any other chronic medical conditions?

7 A. Well, high blood pressure and diabetes.

8 Q. And I apologize for these indelicate questions, sir;
9 but how tall are you?

10 A. 6'1".

11 Q. And how much do you weigh?

12 A. About 220.

13 Q. Has a doctor ever told you that you are overweight or
14 you should lose some weight?

15 A. Yes.

16 Q. Has a doctor ever told you that you are obese?

17 A. Yes.

18 Q. Does carrying those extra pounds make it more
19 difficult for you to do anything day-to-day?

20 A. Yes. I am just not as physically able to do most
21 things that I have done in the past. Of whether it's my
22 legs, the extra weight I carry, it's I guess a combination
23 of both things.

24 Q. Does that combination make it more difficult for you
25 to walk?

1 **A.** Yes.

2 **Q.** Does it make it more difficult for you to stand, that
3 combination of medical conditions?

4 **A.** Yeah. I cannot -- I cannot stand for very long.

09:47:08

5 **Q.** How long have you been diagnosed with diabetes, sir?

6 **A.** Since 2008.

7 **Q.** And how about how long have you been diagnosed with
8 high blood pressure?

9 **A.** 1997, '98, somewhere around there.

09:47:57

10 **Q.** Do you know if there are any other inmates at the Pack
11 Unit who have diabetes?

12 **A.** Yes. There is a number of them.

13 **Q.** How do you know that?

09:47:57

14 **A.** Well, when we are waiting in the insulin line, there
15 is two long lines. Sometimes a 45, sometimes an hour
16 wait. And the nurses have said they have 150 of us or
17 thereabouts doing insulin.

18 **Q.** On an average day, not -- not a day during the summer
19 but a day during other parts of the year, does your
20 diabetes change anything that you do day-to-day?

09:48:08

21 **A.** No, not really as far as --

22 **Q.** Does it change -- I'm sorry, sir. Go ahead.

23 **A.** Well, I just -- it -- it's just a lifestyle that you
24 have to learn to live with.

09:48:25

25 **Q.** And what kind of things do you do differently to live

1 with that lifestyle?

2 **A.** Well, what you eat. You have got to make sure you eat
3 enough, don't eat too much. I have had a couple of
4 episodes just recently where my sugar level dropped, and I
5 had to go to the infirmary.

09:48:43

6 **Q.** Tell the -- I'm sorry.

7 **A.** You have got to be cognizant of that.

8 **Q.** Tell the -- tell the Court what it was like the most
9 recent time your blood sugar got out of whack.

10 **A.** Well, I just -- I had done insulin, ate breakfast,
11 went back to the dorm; and my sugar just dropped for some
12 reason. And I am not really aware of a lot that is going
13 on when your sugar drops like that; and they had to come
14 get me in a wheelchair, take me in and give me some
15 glucose and peanut butter and crackers.

09:49:00

16 And after 30 or 40 minutes, the sugar comes back up;
17 and, you know, you are -- you are okay.

18 **Q.** What did that feel like to you when that -- that
19 incident happened?

20 **A.** Well, it's scary. I mean, you -- you don't know it is
21 happening when it happens. And then, when
22 you're -- become aware of what is happening, you -- you
23 know, you -- you know, can -- you don't know what
24 happened, you know, while you was having one of those
25 episodes.

09:49:36

09:49:51

09:50:14

1 Q. How about your -- your high blood pressure? On an
2 average day, how does that affect you?

3 A. Well, I don't really know that it affects me all that
4 much on a -- on an average day.

09:50:36 5 Q. Do you take medication for your blood pressure?

6 A. Yes.

7 Q. Have you ever missed a few doses of your blood
8 pressure medicine?

9 A. No.

09:50:46 10 Q. I'm going to show you a portion of Plaintiffs'
11 Exhibit 47, sir. It should pop up on the screen there in
12 front of you. Do you see that?

13 A. Yes.

14 Q. That is a list of conditions that UTMB says may affect
09:51:15 15 heat tolerance. Can you tell the Court which of those
16 conditions you have, sir?

17 MS. O'LEARY: Your Honor, I object. There is no
18 foundation for this document; and it's -- it's not a copy
19 of a policy. It seems to be a chart that the plaintiffs
09:51:31 20 created.

21 THE COURT: Well, does UTMB deny that that is
22 what it believes are comorbidities?

23 MS. O'LEARY: There is no foundation for these.

24 THE COURT: Well, I know; but we're sitting
09:51:45 25 without a jury. So I'm just trying to get to the end

1 question. I mean, is there a dispute about whether these
2 are common comorbidities or not?

3 MS. O'LEARY: Your Honor, UTMB isn't a party; and
4 we can't speak for them. And there is no medical witness
09:51:57 5 here to tell us whether this is right or not. And that's
6 why he needs to lay the foundation.

7 THE COURT: Okay. If you will try to lay a
8 foundation as to --

9 MR. MEDLOCK: Your Honor, it's -- I don't know
09:52:06 10 that this witness can. It's a document from -- it's a
11 portion of the document from the Correctional Managed
12 Health Care committee which TDCJ is a member of. It's
13 part of the policy that's been in effect forever. It was
14 produced to us by TDCJ in this litigation. I don't think
09:52:23 15 that there should be any dispute about whether this
16 document is authentic or not.

17 THE COURT: Well, if you produced it, surely it's
18 not --

19 MS. O'LEARY: Your Honor, I'm not sure that we
09:52:32 20 did produce this. I'm not seeing a Bates number. It
21 looks like maybe a summary of some documents that do
22 exist.

23 MR. MEDLOCK: It's a portion of the -- it's a
24 screenshot of the relevant portion of the exhibit, Your
09:52:43 25 Honor. We can give you the whole page with the Bates

1 number.

2 THE COURT: Could you hand it to Mr. Rivera then,
3 please.

09:52:50

4 MR. EDWARDS: And, Your Honor, if I may, if this
5 is going to be a common refrain, it's just -- we're going
6 to be here about three and a half weeks.

7 THE COURT: Well, I understand.

8 MR. MEDLOCK: I have a Bates number here, Your
9 Honor. It's --

09:53:02

10 MR. JAMES: My name -- my name is David James. I
11 just handed the Court Plaintiffs' Exhibit 47.

12 THE COURT: Okay. This is TDCJ Bates Number
13 83504. It looks like a direct copy.

09:53:20

14 MR. MEDLOCK: It's also Defendants' Exhibit
15 Number 4, Your Honor.

16 (Plaintiffs' Exhibit Number 47 offered into evidence.)

17 (Defendants' Exhibit Number 4 offered into evidence.)

18 THE COURT: I'm going to allow it.

09:53:28

19 MR. McCARTY: Your Honor, Darren McCarty for
20 TDCJ. If -- if we could, it would be helpful for us if
21 plaintiffs -- when plaintiffs address some of the issues
22 like Mr. Edwards raised, if we could see the document with
23 the Bates number.

09:53:39

24 THE COURT: I'm sorry. I thought you had it.
25 Okay.

1 MR. McCARTY: Well, we -- all we see is what is
2 on the screen.

3 THE COURT: Okay. Well, why don't you show them
4 that document then, if you would. I'm sorry. I thought
5 you had it.

09:53:44

6 MR. McCARTY: It's not this particular document,
7 Your Honor. We'll, obviously, take the representation of
8 this is Bates numbered; but in the future if --

9 THE COURT: Okay. That's all right. That's all
10 right. That's purely mechanical. We can handle that.

09:53:53

11 MR. MEDLOCK: Counsel, it appears we neglected to
12 give you your copy of our exhibits. I think David has got
13 those right there for you.

14 MR. McCARTY: Thank you. That will help us.
15 Thank you, sir.

09:54:11

16 MR. MEDLOCK: It's Plaintiffs' Exhibit 47 and
17 Defendants' Exhibit Number 4.

18 THE COURT: All right.

19 MS. O'LEARY: Your Honor, it's --

20 THE COURT: Excuse me.

09:54:24

21 MS. O'LEARY: It does appear that this is a
22 portion of the policy, but I think it would help things go
23 along more smoothly if they would refer us to a page
24 number and an exhibit so that we can find it.

25 THE COURT: Well, we'll do that in the future.

09:54:34

1 That's fine. That's fine. But just for now, this comes
2 in.

3 (Plaintiffs' Exhibit Number 47 admitted into
4 evidence.)

09:54:49

5 (Defendants' Exhibit Number 4 admitted into evidence.)

6 MR. MEDLOCK: May I continue, Your Honor?

7 THE COURT: You may continue.

8 Q. (By Mr. Medlock) Mr. King, have you had a chance to
9 look at this exhibit?

09:54:55

10 A. Yes.

11 Q. Which of these conditions here on the exhibit do you
12 have?

13 A. Well, diabetes and over the age of 65.

14 Q. And you also take heart medication; is that right?

09:55:10

15 A. Yes.

16 Q. So you would have cardiovascular disease, sir?

17 A. Yes.

18 Q. You have diabetes?

19 A. Yes.

09:55:18

20 Q. And you are over 65?

21 A. Yes.

22 Q. Now, do you also take some medications, Mr. King?

23 A. Yes.

24 Q. Do you know the names of all the medications you take?

09:55:36

25 A. No. But I have them with my ID card and -- so if I am

1 ever questioned about them, you know, I have them written
2 down.

3 **Q.** Well, let me show you a portion of your medical
4 records, sir; and this is a portion of Plaintiffs'
5 Exhibit 24. The Bates number is 123086. It was produced
6 to us by TDCJ.

7 And, sir, this is a portion of your record from March
8 the 21st, 2017. Do those look like the medications that
9 you are taking currently?

10 **A.** Yes.

11 **Q.** I'm going to show you another portion of Plaintiffs'
12 Exhibit 47 and Defense's Exhibit Number 4; and it is page
13 TDCJ83501. Do you see that portion of UTMB's CMHC's
14 policy, Mr. King?

15 **A.** Yes.

16 **Q.** This is a list of medications that are associated with
17 heat stress. Can you tell the Court, to the best of your
18 ability, which of these medications you take, sir?

19 **A.** Well, furosemide, which is a fluid pill, Lasix fluid
20 pill.

21 **Q.** Do you also take --

22 **A.** Yeah. The carvedilol or whatever it is.

23 **Q.** The carvedilol?

24 **A.** Yes.

25 **Q.** And then you also take the furosemide?

1 **A.** Furosemide, yes.

2 **Q.** So you take two of those medications?

3 **A.** Yes.

09:57:40

4 THE COURT: Counsel, if you are talking about
5 medications, perhaps it would be useful if you spell them.

09:58:44

6 MR. MEDLOCK: That's an excellent idea. The
7 first one is C-a-r-v, as in Victor, e-d, as in dog,
8 i-l-o-l. And the second is furosemide, F as in Frank,
9 u-r-o-s-e, as in elephant, m-i-d, as in dog, -e, as in
10 elephant.

11 THE COURT: Thank you, Mr. Medlock.

12 **A.** And I also take hydroxyzine.

13 **Q.** (By Mr. Medford) The --

14 **A.** Antihistamine.

09:58:44

15 **Q.** -- antihistamine?

16 **A.** Yes.

17 **Q.** H-y-d, as in dog, r-o-x-y-z-i-n-e; is that correct,
18 sir?

19 **A.** No. I'm mistaken.

09:58:44

20 **Q.** Okay.

21 **A.** I take hydrozaline.

22 **Q.** You take a similar antihistamine?

23 **A.** Yeah.

09:58:50

24 **Q.** All right. Mr. King, I want you to just tell Judge
25 Ellison what the heat feels like in your dormitory at the

1 Pack Unit.

2 **A.** Well, a common allergy -- analogy that we use a lot is
3 it's like a -- you walk out to your car in the middle of
4 the summertime. It's open your door and, you know, the
5 heat just comes out. Well, you can get in your car, cut
6 on your air-conditioner; and it's cooling a little bit.
7 We don't have the cooling. It's -- it's hot all the time.

09:59:16

8 THE COURT: Do you have any ability to access
9 respite areas?

09:59:34

10 THE WITNESS: Yes, sir.

11 THE COURT: 24 hours you have access to them?

12 THE WITNESS: No, sir. I don't think so.

13 THE COURT: How much of the day is that available
14 to you?

09:59:43

15 THE WITNESS: Well, it is, as far as I know, from
16 sometime in the mornings, whenever they are needed, up
17 until around 10:00 or 10:30 at night. I've not
18 experienced any -- you know, I don't know of anybody that
19 has went longer than that.

10:00:09

20 THE COURT: Do you have access to showers all
21 through the day?

22 THE WITNESS: Yes. Where I live I do, yes.

23 THE COURT: Do you have access to cold water all
24 during the day?

10:00:19

25 THE WITNESS: Yes.

1 THE COURT: Have you been trained about the risk
2 of heat and mitigating measures?

3 THE WITNESS: Yes. Recently they started showing
4 us a PowerPoint-type video.

10:00:31

5 THE COURT: Okay. Do you feel relief in those
6 mitigation measures?

7 THE WITNESS: Temporarily, yes.

8 THE COURT: Okay. Okay. Go ahead, Mr. Medlock.

10:00:46

9 **Q.** (By Mr. Medlock) How does your body feel in your
10 dormitory on those very hot days, Mr. King?

11 **A.** You're drained. You're -- you sweat a whole lot. You
12 are -- just have -- your energy level drops way down.
13 You -- at least I do, I find it hard to function as well
14 as I can on -- on cooler days. Everything seems to just
15 slow down.

10:01:26

16 **Q.** Are there things that you have difficulty doing during
17 the summer that you don't during the rest of the year?

18 **A.** Yes. You -- physical activity is a lot harder, a lot
19 undesirable in the summer. During cooler times you can go
20 out in the rec yard, walk around, get a little bit of
21 exercise. In the summer it's -- it's -- that's out of the
22 question.

10:01:59

23 **Q.** Does it affect your ability to do anything that you
24 usually do in the dorm?

10:02:25

25 **A.** Well, as far as writing letters, reading -- you try to

10:02:58

1 sit there and write a letter, you are sweating all over
2 your paper. You're -- try to read, water, sweat will get
3 in your eyes. You lay down, stretch out, the sweat pools
4 in my eyes. So it is -- it's just things you can do when
5 it's cooler it's almost impossible to do when it's hot.

6 **Q.** Do you have any physical symptoms? You mentioned
7 sweating a lot. Anything else that you physically feel on
8 those hottest days?

10:03:22

9 **A.** Well, I guess, which may be not a bad thing, but my
10 appetite diminishes quite a bit. You don't -- you don't
11 feel like eating at all. But to maintain your sugar
12 level, a diabetic, I have to eat. And you have got to
13 force yourself to eat sometimes.

14 **Q.** Do you have trouble sleeping on those very hot days?

10:03:40

15 **A.** Yes. It's -- it -- it's often cooler laying on the
16 concrete floor than it is in the bunk. It just -- it's
17 just you are sitting in front of a little private fan that
18 we buy. And it's just -- it's blowing steady hot air.

19 **Q.** With your medical conditions, is it difficult for you
20 to get up and off the floor to lay on the floor?

10:04:14

21 **A.** I wouldn't say -- no. I can manage to get up and down
22 okay on that.

23 **Q.** These symptoms that you have described, the sweating a
24 lot, the loss of appetite, feeling things just slow down,
25 do you have those symptoms any other time of the year?

10:04:37

1 **A.** No, not near -- it's -- this is -- this is a summer
2 thing. It's -- it's in the -- when it's cooler weather
3 it's -- it's -- you, at least myself, my appetite is okay.
4 I can -- I can, you know, write letters. I can read. I
10:05:04 5 can do what I want to do. It's -- it's just the heat is
6 so -- so debilitating.

7 **Q.** Now, the days that you feel those symptoms in the
8 summer that you have just talked about with the Court, are
9 you drinking plenty of water on those days?

10:05:20 10 **A.** Yes.

11 **Q.** How much water do you drink, ballpark, on an average
12 summer day?

13 **A.** Easily a gallon throughout the day.

14 **Q.** Are you making use of the fans that TDCJ provides to
10:05:34 15 you on those very hot days?

16 **A.** Yes. I mean, they are -- you just -- they are there.
17 If you can get to sit down in front of one, that's good.

18 **Q.** Do you still have those symptoms even after using the
19 water and the fans?

10:05:52 20 **A.** Well, yes. I mean, you get -- you can't sit in front
21 of a fan all the time; and the fans, at certain times,
22 they're just blowing warm air. They are not -- you know
23 what I mean, they are not really -- they don't have much
24 of a cooling effect.

10:06:07 25 **Q.** Now, you mentioned to the judge that you can take a

1 shower when you feel like it in the dormitory where you
2 are. How does the -- does the cold shower help you much
3 with the heat?

4 **A.** Yes. When you are in the shower it -- it helps a lot.
10:06:27 5 You leave the shower; and within a few minutes, you are
6 sweating just as much as you were before you got in the
7 shower.

8 **Q.** Does the heat make it difficult for you to get enough
9 sleep during the summer?

10:06:48 10 **A.** I would say so. It -- it just -- like last night,
11 coming down here we packed up our stuff. Well, they told
12 us we had to pack up our little personal fan, also. And
13 so, I spent two hours with no fan at all; and that's -- I
14 mean, I didn't get a wink of sleep. I haven't been asleep
10:07:20 15 since I got up Saturday -- I mean, Sunday morning.

16 **Q.** What time did they actually get you guys out of the
17 prison to come to court this morning?

18 **A.** I think we left -- actually, after we got loaded up
19 into the van, it was somewhere around 5:30.

10:07:42 20 **Q.** What do you -- what -- is there anything you haven't
21 mentioned to the Court yet that you try and personally do
22 to cope with the heat during the summer?

23 **A.** Well, I try to keep my body wet. That -- that seems
24 to work better than -- than just about anything. I keep a
10:08:12 25 little small towel that's -- I keep it with cold water on

1 it, wipe my body down, hang it around my neck; but it
2 gets -- it dries out. I go back to the sink, wet it
3 again. And if you do that and lay down in front of your
4 little fan, that's better than not laying down in front of
5 your fan.

10:08:38

6 **Q.** Do you see other inmates do other things to cope with
7 the heat?

8 **A.** Well, yeah. They -- they -- a lot of them do things
9 similar to myself, and they have a -- the commissary sells
10 one of these cool towel things that some of those -- they
11 buy those. I have not bought one. I have had a couple of
12 guys tell me that they didn't -- they didn't work. So I
13 wasn't going to waste my \$7 or \$8 to -- to buy one.

10:09:00

14 **Q.** Do you see other inmates wet all their clothes down
15 completely and put them on wet?

10:09:20

16 **A.** Yes. I have seen that a number of times.

17 **Q.** Do you see any other inmates suffering from the heat?

18 **A.** I have seen --

19 MS. O'LEARY: Objection. Calls for speculation.

10:09:38

20 THE COURT: When I'm sitting without a jury, I
21 don't worry too much about objections like speculation. I
22 think I can discount accordingly for what this witness
23 knows and doesn't know. So I'll allow the question and
24 form my own judgment about the basis for it.

10:09:54

25 MS. O'LEARY: Yes, Your Honor. Thank you.

1 THE COURT: Go ahead.

2 MR. MEDLOCK: Thank you, Your Honor.

3 Q. (By Mr. Medlock) I'm sorry, sir. Do you see other
4 inmates suffering from the heat in the summer?

10:10:04

5 A. Yes. I mean, that's -- I would say the heat affects
6 almost all the inmates. There may be one or two that like
7 it, but I don't know them personally. Everybody that I
8 know, it affects.

10:10:23

9 Q. Tell the judge how you can tell that other inmates are
10 suffering. What things have you seen that indicate to you
11 that other inmates are suffering?

10:11:04

12 A. Well, like, say, wetting your clothes down, getting
13 those towels. There is just less movement. There is less
14 activity the hotter it gets. The -- most people will stay
15 close to their bed where they have got their -- their
16 little private fan and stay wet with a fan blowing on us.

17 Q. Sir, have you ever lived anywhere else as hot as the
18 Pack Unit?

10:11:40

19 A. Well, when I was on the Wynne Unit, another prison, it
20 was just as hot as the Pack. I mean, all of TDCJ is hot.
21 But it seems like the metal building that the -- it seems
22 like it absorbs the heat more than some of the brick
23 structures.

24 Q. Sir, did you ever serve in the Armed Forces?

10:12:05

25 A. Yes.

1 Q. Which?

2 A. I was in -- in the Navy.

3 Q. And when did you serve?

4 A. During the '60s.

10:12:16 5 Q. Were you ever deployed anywhere?

6 A. Yes. Went to the Gulf of Tonkin three different times
7 on aircraft carriers.

8 Q. Were any of those aircraft carriers air-conditioned?

9 A. The first trip we made over it -- the
10:12:35 10 air-condition -- it was not. They pulled it out of
11 mothballs. And the other three trips I made over, they
12 air-conditioned those carriers.

13 Q. Was it the same ship every time, or were you on
14 different ships?

10:12:51 15 A. No. On different ships.

16 Q. How does the -- how does the hull of the aircraft
17 carrier that was unair-conditioned compare to the Pack
18 Unit as far as heat goes?

19 A. Real -- real similar. The thing there aboard ship, we
10:13:16 20 could go up on the flight deck, crawl up on our airplane
21 and go to sleep. We had usually a 20- or 30-knot wind
22 blowing across the deck, and that -- that cool ocean wind
23 made it much better than it was down below deck.

24 Q. What about sleeping on the wing of your airplane
10:13:43 25 versus sleeping in the Pack Unit?

1 **A.** Well, it was cooler on the wing of the airplane than
2 it is in the Pack Unit.

3 **Q.** Have you ever lived in a TDCJ prison that has
4 air-conditioning?

10:13:59

5 **A.** Well, when I was paralyzed from that disease I had, I
6 was at the what they call a RMF, Regional Medical
7 Facility, over at the Estelle Unit. It's basically a
8 hospital, and it was air-conditioned. And the John Sealy
9 Hospital, it is air-conditioned. But that's the only two
10 places I have ever been that had air-conditioning.

10:14:27

11 **Q.** Does anyone from TDCJ ever tell you what the indoor
12 temperature is at the Pack Unit?

13 **A.** No.

10:14:45

14 **Q.** How about the indoor heat index? Has anyone from TDCJ
15 ever told you the indoor heat index?

16 **A.** No.

17 **Q.** Is the dining hall at the Pack Unit air-conditioned?

18 **A.** No.

10:14:57

19 **Q.** Tell the judge what it's like to try to eat in that
20 environment.

21 **A.** Well, they -- they have four fans they put up a couple
22 of years ago that if you're -- happen to be in the -- in
23 one of those, it helps; but for the most part, the chow
24 hall is hot. The steam tables are on one side, the tray
25 room. The scullery where they have got the hot

10:15:25

1 dishwashers are on the other side. So you are kind of in
2 between, and it's -- it's hot.

3 **Q.** Did you ever see correctional officers at the Pack
4 Unit having difficulty with the heat?

10:15:50 5 **A.** Well, oftentimes their uniform is -- is completely wet
6 from sweating. I have -- you hear them complaining about
7 the heat and -- but none of them has never personally told
8 me that, you know, that they were, you know, just
9 absolutely dying of heat. But just to look at them, you
10:16:32 10 can tell they are just as hot as I am.

11 **Q.** Now, sir, you answered some questions a moment ago
12 from Judge Ellison about the respite areas. I would like
13 to talk to you a little bit more about your experiences
14 with those.

10:16:47 15 When did someone from TDCJ first inform you that the
16 respite areas existed?

17 **A.** They were -- the respite areas was a form posted on a
18 bulletin board.

19 **Q.** I'm going to show you a portion of Plaintiffs'
10:17:13 20 Exhibit 52, sir. Is that a portion of that photograph or
21 of that poster, sir?

22 **A.** Yes.

23 **Q.** And I understand the other half of the poster is in
24 Spanish; is that right?

10:17:30 25 **A.** Yes.

1 Q. Okay. On this list of respite areas, sir, which of
2 these have you actually seen used as a respite area?

3 A. The education department, the lower administration
4 hallway, infirmary and barbershop.

10:17:56 5 Q. Would that be the officer or the prisoner barbershop?

6 A. The offender barbershop.

7 Q. So in your experience, none of those other -- you have
8 never seen those other areas actually used as a respite
9 area?

10:18:12 10 A. No.

11 Q. Has anyone from TDCJ ever explained to you how you can
12 access the respite areas?

13 A. Not -- no. Not verbally, no. Just with the posting.

10:18:38 14 Q. Describe for the judge what your personal experience
15 using the respite areas has been like.

16 A. I have only used them twice because I have went in the
17 barbershop one time and sat there. It's always too
18 crowded. There is only seats for about no more than eight
19 people. A lot of times there is two or three wheelchairs.

10:19:17 20 The barbers, if they are working, they have got guys in
21 there waiting to get haircuts. So only a few people can,
22 you know, be in there; and you have got to stand up.

23 Well, the one time that I was in the barbershop, they
24 closed it down, told us to go across the -- the hallway to
10:19:36 25 the admin, the lower admin hallway. And at that time, we

1 had to stand and face the wall.

2 And then, when we was there about ten minutes, they
3 said we had to leave because they had to move a protective
4 custody inmate. So we had to get on the other side of the
10:20:06 5 locked gate; and I just says, that's it. And I just -- I
6 went to my living location.

7 **Q.** That -- that episode trying to use the respite areas,
8 about how long were you total in one of the
9 air-conditioned spaces?

10:20:27 10 **A.** 30 minutes maybe.

11 **Q.** Did they make you stand in both locations?

12 **A.** Well, you had no choice in the barbershop because
13 there is -- there is very limited -- like I say, there is
14 two little benches against the wall. One will hold four
10:20:46 15 or five people, and the other one will hold three. And
16 then the lower admin hallway, there is no -- it's just
17 about a 40-inch wide hallway.

18 **Q.** Let me show you some photos, sir. This is a portion
19 of Plaintiffs' Exhibit 2. There is a Bates number down
10:21:06 20 there in the corner. Do you recognize this photo, sir?

21 **A.** Yes. That's the lower admin hallway.

22 **Q.** Okay. Is that what it looked like when you were told
23 to use it as a respite area?

24 **A.** Yes.

10:21:23 25 **Q.** Let me show you another photo, sir. Tell the Court

1 what that is.

2 **A.** That is the offender barbershop.

3 **Q.** And does that look like what the barbershop looked
4 like when you were using it as a respite area?

10:21:38 5 **A.** Yes. But this is empty space now. It was quite
6 crowded at that time.

7 **Q.** How many guys would you estimate were in the
8 barbershop at the time you used it as a respite area?

9 **A.** Probably -- there was two wheelchairs and probably 11
10:21:56 10 or 12 or 13 people.

11 **Q.** Was it pretty crowded?

12 **A.** Yes.

13 **Q.** These two experiences using the respite areas, when
14 did they take place?

10:22:11 15 **A.** Last year.

16 **Q.** So that would be the summer of 2016?

17 **A.** Summer of 2016, yes.

18 **Q.** Do you remember what part of the summer they were in?
19 Were they the beginning of the summer, end of summer?

10:22:24 20 **A.** I would say probably somewhere toward the middle or
21 end of the summer.

22 **Q.** Do you remember if they were before or after the
23 additional water jugs went into your dormitory?

24 **A.** It was after that, I'm sure.

10:22:40 25 **Q.** What do you have to do to access a respite area at the

1 Pack Unit, sir?

2 **A.** Well, if you are in your living location, you have got
3 to request whoever happened to be working that area; and
4 they will, I understand, call the desk and -- which is a
5 controlling point in the -- in the unit there. And they
6 ask if the inmate can come to the respite area. And then,
7 you go to the respite area.

8 **Q.** What is the most inmates you have ever seen using a
9 respite area at one time?

10 **A.** Personally, the barbershop was maybe 12 or 15 people
11 in it.

12 **Q.** What do the fans feel like on the very hottest days of
13 the summer, sir?

14 **A.** They just blow hot air. I mean, they move air around,
15 but it's -- but it's hot.

16 **Q.** Can you tell if there is much difference between the
17 inside and the outside temperature at the Pack Unit during
18 the summer on those hottest days?

19 **A.** Well, some days it's cooler outside because there is a
20 breeze blowing; and it's -- it's a -- it's not like the
21 inside. It's just recirculating all the hot air. And if
22 you -- if you go outside, if you are not right in the
23 direct sunlight, you can -- sometimes you can get a cooler
24 breeze.

25 **Q.** Now, you mentioned the -- the showers in your dorms,

1 sir. How many men live in your dorm?

2 **A.** Well, the dorm I live in there is -- is -- there is
3 111.

4 **Q.** And how many cold-water showers are there?

10:25:18

5 **A.** One.

6 **Q.** Does the -- the other showers, can you toggle them
7 between hot and cold or are they just hot water or how do
8 they work?

10:25:32

9 **A.** No. They're the -- the temperature setting is set at
10 the water heaters up -- upstairs out of -- where we don't
11 have access to, in the maintenance areas.

12 **Q.** In your experience, sir, do officers do wellness
13 checks during the summer at the Pack Unit?

10:26:00

14 **A.** Not in the summer any time more than the wintertime.
15 They -- only time I have seen any kind of wellness check
16 is when they come by to count they'll -- if you happen to
17 be asleep, they will wake you up and ask you if you are
18 okay. Then they go on their counting.

10:26:23

19 **Q.** Is there anything more to the wellness check than
20 waking you up and asking if you are okay if you happen to
21 be asleep?

22 **A.** Yeah. No. There is nothing.

23 **Q.** If you are not asleep, what does a wellness check look
24 like, from your perspective?

10:26:36

25 **A.** I have not -- if you are awake, there is no check at

1 all. They just walk on past.

2 **Q.** Do the officers do those checks for everyone or just
3 some people in your dormitory?

4 **A.** To everyone.

10:26:56

5 **Q.** And how often do those wellness checks that you are
6 describing take place?

7 **A.** When they count, they have a 6:30 count in the
8 morning, a 9:30 count, a 12:30 count in the afternoon and
9 then a 3:30 count; and then they have another 6:30 p.m.

10:27:20

10 count and then an 8:30 p.m. count and a 10:30 p.m. count.

11 **Q.** Now, we mentioned a moment ago the additional water
12 jugs in your dorm. Do you recall that last summer?

13 **A.** Yes.

10:27:42

14 **Q.** Did anyone from TDCJ ever tell you why there were
15 additional water jugs being put in your dorm?

16 **A.** No. Not from TDC.

17 **Q.** Did anyone from TDCJ ever explain to you that one jug
18 had water with arsenic levels above the EPA maximum levels
19 and one had water with no arsenic in it?

10:28:06

20 **A.** We knew that, but no -- no one told us officially.

21 **Q.** How did you know that?

22 **A.** The lawyers told us and the guys that -- the inmates
23 that haul the water and fill the jugs said that there was
24 a tanker out there and they were getting the water out of

10:28:26

25 the tanker for the arsenic-free jug.

1 Q. Sir, have you ever attended an event in the gym at the
2 Pack Unit?

3 A. Yes. I went to church a number of times.

4 Q. Those church services, do they have folding chairs for
5 everyone?

6 A. Yes. They -- I have -- I have been told, and they
7 have got big racks of them that they hold around 250 or so
8 folding chairs.

9 Q. Have you ever been required to leave your dorm to
10 attend some sort of event at the Pack Unit?

11 A. I have never been forced to leave the dorm for
12 anything other than this little PowerPoint
13 heat -- recognize heat illness. They took us from the
14 dorm out to the little area in the building that I live
15 in, which used to be used as a gym; but it's -- it's not
16 anymore. But they set up a television there. And we were
17 required to watch that and sign our name on a roster
18 saying that we had watched it.

19 Q. When did that -- when is the first time that happened?

20 A. Well, it has only happened once; and that was, I don't
21 know, two or three months ago.

22 Q. Do you know if it was before or after May 1st of this
23 year?

24 A. I would say it was before, I would think.

25 Q. Did that PowerPoint presentation that you watched on

1 the TV say anything about respite areas?

2 **A.** No.

3 **Q.** Was -- could you have declined to attend that
4 training?

10:30:39

5 **A.** No.

6 **Q.** What did the -- did anyone from TDCJ tell you there
7 would be any consequence to not attending that training?

8 **A.** No. They just told us that we had to go. And earlier
9 in the week or the week before, I was in the craft shop

10:31:06

10 and they told us we had to go down to the gym there and
11 they was going to show us this heat-related film. And we
12 watched it there and signed the roster.

13 And then when they come in to the dorm a week later or
14 so, we told them we had -- a number of us that was in the
15 craft shop said we had already seen it once. They said,
16 well, that don't make no difference. Sit down here and
17 see it again and sign it.

10:31:31

18 **Q.** Does the film that you or the PowerPoint that you
19 watched make any mention of the deaths that have occurred
20 from heatstroke at other TDCJ prisons?

10:31:47

21 **A.** No.

22 **Q.** Sir, why did you want to be a plaintiff in this case?

23 **A.** Well, I have spent, at the time, 26 summers; and we
24 need some relief from the heat. I mean, it's just --

10:32:18

25 it's -- it's debilitating.

1 MR. MEDLOCK: Pass the witness, Your Honor.

2 THE COURT: Thank you very much.

3 Cross-examination of this witness?

10:32:35

4 MS. O'LEARY: Yes, Your Honor. May I stand at
5 the podium?

6 THE COURT: That's fine. Either way, whichever
7 you are most comfortable.

8 MS. O'LEARY: Can we switch to the defendants.

9 **CROSS-EXAMINATION**

10:32:42

10 BY MS. O'LEARY:

11 Q. Good morning, Mr. King. My name is Leah O'Leary, and
12 I work for the Attorney General's office. Have we ever
13 met before?

14 A. I don't think so.

10:32:52

15 Q. Now, you testified that you were in the Navy before
16 you were incarcerated and that on your first ship there
17 was no air-conditioning in your housing, right?

18 A. Right.

10:33:04

19 Q. And so in order to get cool, you had to go and seek
20 out a breeze outside or something like that?

21 A. Yes.

22 Q. Correct. So on a U.S. Navy ship you were trained
23 about how to stay hydrated and how to keep yourself cool,
24 right?

10:33:18

25 A. I can't remember any training officially. It

1 just -- you just seek the coolest spot you can.

2 **Q.** Okay. Did you go through boot camp or some kind of
3 similar camp?

4 **A.** Yes.

10:33:33

5 **Q.** Okay. And in boot camp they taught you about staying
6 hydrated and avoiding heat exhaustion, right?

7 **A.** I'm sure they did; but that's been so many years ago,
8 I couldn't -- yeah.

10:33:50

9 **Q.** After you were in the Navy, you also went through a
10 fire academy, didn't you?

11 **A.** Yes.

12 **Q.** In the fire academy they taught you how to stay
13 hydrated and how -- they even taught you how to treat
14 patients that might have a heat-related illness, right?

10:34:01

15 **A.** Yes.

16 **Q.** Okay. And then in the fire academy you did, I assume,
17 practice burns where you had to put on all your fire gear
18 and maybe go into some hot situations?

19 **A.** A couple of times, yes.

10:34:14

20 **Q.** Okay. And before you did that, they trained you on
21 recognizing when you were feeling some kind of heat
22 exhaustion, correct?

23 **A.** Probably. I can't -- I don't remember any particular
24 time, but I'm sure it was there.

10:34:33

25 **Q.** Have you ever shared any of your special knowledge

1 about heat mitigation with any of the Pack Unit offenders?

2 **A.** No.

3 **Q.** Now, do you still currently work in the craft shop?

4 **A.** Yes.

10:34:49

5 **Q.** Okay. And what do you do in the craft shop?

6 **A.** Well, now I'm into art.

7 **Q.** Oh, okay. Is that still in the craft shop area?

8 **A.** Yes.

9 **Q.** Okay. And the craft shop is air-conditioned, isn't

10:35:01

10 it?

11 **A.** Only one little room is.

12 **Q.** Okay. And the craft shop is open four days a week for
13 ten hours; is that correct?

14 **A.** It -- it varies. They have changed the hours now.

10:35:12

15 It's some -- it's open five days a week, some now at
16 different hours. 7:00 in the morning until 3:00 in the
17 afternoon. Then it goes sometimes 2:00 in the afternoon
18 to 10:00 at night. And then some of it is 5:00 in the
19 morning to 2:00. They -- they made some changes.

10:35:34

20 **Q.** Okay. Is it still roughly eight to ten hours a day
21 that it's open?

22 **A.** Yes.

23 **Q.** And when you are in the craft shop, you can go into
24 that air-conditioned area at any point, can't you?

10:35:47

25 **A.** Yes.

1 Q. Okay. You have seen plaintiffs Cole and Brannum come
2 into the craft shop, haven't you?

3 A. Yes.

4 Q. In fact, they come in there pretty frequently?

10:36:01

5 A. Yes.

6 Q. Do they work in the craft shop?

7 A. Yes.

8 Q. Okay. And they are allowed to go into the
9 air-conditioned area of the craft shop any time they need

10:36:10

10 to, right?

11 A. Yes.

12 Q. Okay. No one is restricted from going in there; is
13 that correct?

14 A. Not at -- not if you are in the -- in the -- in the
15 craft shop, no.

10:36:19

16 Q. Okay. Now, you have already testified that you take
17 medications every day. You have to go to the infirmary
18 twice a day for insulin, correct?

19 A. Yes.

10:36:30

20 Q. Okay. And you are able to walk yourself there without
21 a nurse assisting you to get over there, can't you?

22 A. Yes.

23 Q. Okay. And you are pretty good about remembering to go
24 there and get your insulin every day don't you -- aren't

10:36:43

25 you?

1 **A.** Yes.

2 **Q.** Okay. And you take pills every day, as well in
3 addition to your insulin?

4 **A.** Yes.

10:36:49

5 **Q.** And do you keep those pills on you, or do you have to
6 pick them up from the pill window?

7 **A.** No. I -- I have got KOP. They call it "keep on
8 person."

9 **Q.** Keep on person?

10:37:00

10 **A.** Yes.

11 **Q.** And you do a pretty good job of remembering to take
12 your pills every day, right?

13 **A.** Yes.

14 **Q.** Okay. And sometimes you have medical appointments or
15 medical lay-ins, don't you?

10:37:09

16 **A.** Yes.

17 **Q.** And you can get yourself from your dorm to your
18 medical appointments without assistance?

19 **A.** Yes.

10:37:18

20 **Q.** Okay. And you can walk to the -- the chow hall and
21 get food if you want to, right?

22 **A.** Yes.

23 **Q.** You don't need assistance to get to the chow hall?

24 **A.** No.

10:37:28

25 **Q.** Okay. And no one forces you to eat if you are not

1 hungry, do they?

2 **A.** No.

3 **Q.** Okay. It's up to the offender. If he feels like he
4 is hungry, he needs to go eat; and nobody is going to come
5 around and remind you, Did you eat today; is that true?

6 **A.** That's true.

7 **Q.** Okay. You testified that having extra weight hinders
8 you from doing some things that you used to, but it
9 doesn't stop you from getting to the chow hall. How about
10 getting to the showers? Can you get there on your own
11 physical attempt?

12 **A.** Yes.

13 **Q.** Okay. You don't need help to get to the showers?

14 **A.** No.

15 **Q.** Okay. And you testified that your high blood pressure
16 doesn't affect you on a daily basis either; is that true?

17 **A.** Not that I'm aware of, no.

18 **Q.** Okay. It doesn't keep you from getting up and going
19 where you need to go?

20 **A.** No.

21 **Q.** Okay. Now, you live in the E dorm, expansion dorm;
22 and you testified that there are showers in your dorm. So
23 does that mean you can just walk from your cubicle to the
24 showers without having to go through any doors or gates?

25 **A.** Yes. Yes.

1 Q. So you don't have to get permission from an officer or
2 be escorted to the showers; is that true?

3 A. No, that's true.

10:38:50

4 Q. Okay. And you testified that there is one shower that
5 is cool; and it's cool all the time, right? And the other
6 ones are hot?

7 A. Yes.

10:39:00

8 Q. Okay. And it's true that it's cool because they
9 turned off the hot water? I think you have testified that
10 the hot water is somewhere else?

11 A. Yes.

12 Q. And you don't get to control the temperature of the
13 shower?

14 A. Right.

10:39:08

15 Q. Okay. On the days that you go to the craft shop, you
16 would agree that you get to spend some time in
17 air-conditioning up there, right?

18 A. Yes.

10:39:20

19 Q. Okay. And it helps you to stay cool that you get to
20 spend some time in air-conditioning, correct?

21 A. Immensely, yes.

22 Q. Okay. It helps immensely?

23 A. Yeah.

10:39:29

24 Q. Is your area where you do art, is that in the
25 air-conditioned area?

1 **A.** No.

2 **Q.** Okay. So you have to step away from your art project
3 and then walk into the air-conditioned part?

4 **A.** Yes.

10:39:40

5 **Q.** Okay. And how often do you do that on an average day?

6 **A.** Numerous times. I mean, it varies. But if there is
7 not a lot of people -- that area is small; and for a
8 couple of three years, my workstation was in there. And
9 there is an eight -- I think eight workstations, nine

10:40:19

10 workstations and there is -- with a band saw, table saw.

11 So there is -- if you get four or five people that's
12 working in there and then two or three other people in
13 there, it's crowded and dangerous even.

14 **Q.** Okay. So how many times on an average day do you go
15 into the air-conditioned area?

10:40:38

16 **A.** Probably half a dozen to two or three.

17 **Q.** And the area is big enough, you said, to fit eight to
18 nine workstations?

19 **A.** Yeah. There is -- there is counters, work benches I
20 think for nine, nine inmates, yes.

10:40:54

21 **Q.** And just to be clear, there is eight to nine
22 workstations in the air-conditioned area?

23 **A.** Yes.

24 **Q.** Is that true?

10:41:02

25 **A.** Yes.

1 Q. Okay. And you said it helps immensely when you can go
2 in the air-conditioning and spend a little time?

3 A. Yes.

4 Q. Okay. You also testified that taking a cool shower
5 helps a lot; is that true?

6 A. Yes.

7 Q. Okay. And you actually like to take extra showers in
8 the summertime, right?

9 A. Yes.

10 Q. If you are in the craft shop and you wanted to go take
11 a cool-down shower, you could do that, couldn't you?

12 A. They discourage leaving the craft shop -- coming in
13 and out of the craft shop without being what we call
14 shaken down. They do a strip-search when we leave to go
15 for lunch and then when we leave for the afternoon.

16 Now, if -- every once in a while I don't guess it
17 would probably matter much if I would walk to the E
18 building to take a shower; but by the time I walk back
19 from the shower I have -- the effect of the shower will be
20 null already.

21 Q. Okay. So you have to be searched when you leave the
22 craft shop because there is tools and stuff in there,
23 right?

24 A. Yes.

25 Q. So it's easier for you to just step into the

1 air-conditioned area that's available there if you need a
2 cool down?

3 **A.** Yes. Yes.

4 **Q.** Okay. Now, you testified that you have a personal
5 fan; is that true?

6 **A.** Yes.

7 **Q.** Okay. But in your dorm there is also big ceiling
8 fans, right?

9 **A.** Yes.

10 **Q.** They are huge, like 20 feet in diameter?

11 **A.** Yes.

12 **Q.** Okay. And there is more than one?

13 **A.** There is two in our dorm.

14 **Q.** Okay. In addition to the ceiling fans, there is also
15 some kind of box fans, right, that are located around the
16 room?

17 **A.** Yes, they are -- well, they are -- they are round,
18 36-inch warehouse fans is what we call them. They
19 actually -- actually they just added another fan. We had
20 two of them on the floor. Now they have added a three and
21 a fourth one.

22 **Q.** Okay. And in addition to those 36-diameter fans there
23 is also some pedestal fans that are -- that blow up and
24 down the run, correct?

25 **A.** Yes. There is one on each run. There are four runs,

1 two downstairs, two upstairs.

2 **Q.** Okay. And when we're talking about a run, will you
3 describe exactly what we're talking about?

4 **A.** There is two rows of bunks. One of them is against
5 the wall. One of them is out -- the edge of it is toward
6 the day room. And the aisle down through the middle of
7 that is what we call the run.

8 **Q.** Okay.

9 **A.** And there is a fan on the -- all the fans are on the
10 west end of the run in our dorm.

11 **Q.** Okay. So we're talking about pedestal fans that maybe
12 are up on a pole of some type?

13 **A.** Yes. Right.

14 **Q.** Okay. And that's in addition to the ceiling fans and
15 the 36-inch fans, right?

16 **A.** Yes.

17 **Q.** And then you have your personal fan?

18 **A.** Yes.

19 **Q.** Okay. And you testified that in the summer months
20 when it starts to get hot there is not a lot of activity
21 and the offenders tend to stay maybe in their cubicles
22 more on often; is that true?

23 **A.** Yes. A lot of us do, yes.

24 **Q.** You stay kind of -- you stay still so that you can sit
25 in front of those fans and get some relief, right?

1 **A.** Yes.

2 **Q.** Okay. And you testified that you like to use your --
3 a towel of some type, and you wet it down?

4 **A.** Yes.

10:45:01 5 **Q.** And you put it around your neck to cool down?

6 **A.** Yes.

7 **Q.** Okay. And when you have that wet rag around your neck
8 and you are sitting in front of a fan, that gives you
9 pretty good cooling for that time, right?

10:45:11 10 **A.** For a short period, yes.

11 **Q.** Now, in your dorm there is two water fountains, right?

12 **A.** Yes.

13 **Q.** The kind that you push the button, and the water comes
14 up out of it?

10:45:27 15 **A.** Yes.

16 **Q.** Okay. And there is also two Igloo-type water coolers?

17 **A.** Yes.

18 **Q.** Okay. And you have seen the offenders whose job it is
19 to come around and refill the water and ice, right?

10:45:37 20 **A.** Yes.

21 **Q.** You have seen them around. And they come and refill
22 those coolers pretty frequently, don't they?

23 **A.** Yes.

24 **Q.** They do a good job to check them and see if they need
10:45:54 25 to be topped off?

1 **A.** Yes.

2 **Q.** Okay. Now, you testified about wellness checks. Now,
3 the officers come around several times a day, right?

4 **A.** Yes.

10:46:03

5 **Q.** And they check on offenders around you. You have seen
6 them doing this, correct?

7 **A.** Yes.

8 **Q.** And you testified that they will ask you a question
9 like, "Are you okay"?

10:46:16

10 **A.** Yes.

11 MR. MEDLOCK: Objection. Misstates his
12 testimony.

13 THE COURT: Again, I think, since I'm sitting
14 without a jury, I'm not worried about misrepresentations
15 of what has been said. I can figure that out.

10:46:26

16 **Q.** (By Ms. O'Leary) Well, I'll ask you again. Is it
17 your memory that officers will ask you a question similar
18 to "Are you okay"?

19 **A.** If you are asleep, they wake you up.

10:46:39

20 **Q.** Okay.

21 **A.** That's -- if you are -- if you are awake reading a
22 book, they don't even -- they just go on. Only if you are
23 asleep.

24 **Q.** Okay. If they ask you are you okay, if you are

10:46:52

25 feeling bad, that's a good time to tell somebody, right,

1 if they are asking about how you are feeling?

2 **A.** I guess it would be. I think they just ask and make
3 sure you are alive. They have had a number of people die,
4 and they walk past them a few times with them laying there
10:47:16 5 dead. So this is -- if you are asleep, they don't know
6 whether you are alive or dead. So they beat on the bunk
7 wall. Are you okay? And you go, Yeah. And then they go
8 on.

9 MS. O'LEARY: I'll object as nonresponsive.

10:47:34 10 **Q.** (By Ms. O'Leary) Mr. King, when an officer is asking
11 you if you are okay, is that a good time to tell him if
12 you are not feeling well?

13 **A.** Yes, I guess it would be. If I was feeling bad, I
14 could tell him then, yes.

10:47:50 15 **Q.** But you have never had to report that, right? You
16 haven't gone to medical for a heat-related illness?

17 **A.** No.

18 **Q.** Let's talk about training a little bit. Now, you have
19 already testified that you have been trained in TDCJ by
10:48:05 20 watching a PowerPoint presentation; is that fair?

21 **A.** Yes. I guess you would say that.

22 **Q.** And they showed you that presentation sometime at the
23 beginning of this summer or leading into the summer
24 months?

10:48:15 25 **A.** Yeah. They showed it -- now they are putting it on

1 closed-circuit television.

2 **Q.** What does that mean?

3 **A.** Well, I mean they -- in our dorm we have four

4 televisions back-to-back. Two looks one way, and two

10:48:31

5 looks the other way. And now, I don't know, I guess two

6 or three weeks ago, at certain times during the week, I

7 think it's twice a week, they break in on the broadcast of

8 the TVs and show this little PowerPoint thing.

9 **Q.** So now it's on the TVs in your dorms; but that wasn't

10:48:54

10 the first time that you had seen that video, right?

11 **A.** Right.

12 **Q.** You testified that they called you out to go watch it

13 in some other location?

14 **A.** Yes.

10:49:02

15 **Q.** And in addition to that, you also receive training

16 because you work at the craft shop, right? There is a

17 craft shop supervisor?

18 **A.** Yes.

19 **Q.** She has to train you somehow?

10:49:12

20 **A.** Yeah. They have a safety sheet that she passes

21 around, you read it and initial it and sign off on it.

22 **Q.** And as part of your training from your craft shop

23 supervisor, that also includes things about heat, correct?

24 **A.** Yes. Periodically.

10:49:35

25 **Q.** And you received some kind of pamphlet that talks

1 about recognizing the signs and symptoms of heat-related
2 illness?

3 **A.** Yes.

4 **Q.** And then they tell you about what you can do to try to
5 prevent heat-related illness?

6 **A.** Yes.

7 **Q.** And they tell you about respite and cool-down showers?

8 **A.** Yes. I think it was, yeah, on there.

9 **Q.** And then in the pamphlet it also talks about -- it
10 reminds you to drink lots of water?

11 **A.** Yes.

12 **Q.** And when you walk around the Pack Unit, and
13 particularly in your dorm, do you see posters that remind
14 you to drink water?

15 **A.** Yes. On the bulletin board they have one. I think
16 they even have one posted in the bathroom.

17 **Q.** Okay. Is there a poster next to where the water
18 coolers are?

19 **A.** I don't think so.

20 **Q.** In the bathroom there is a poster that kind of shows
21 the color of urine to help you try to figure out whether
22 you are drinking enough water?

23 **A.** Yes.

24 **Q.** You have seen that poster?

25 **A.** Yes.

1 Q. Okay. And you have also been trained that if you are
2 feeling bad at all that might be heat-related, you should
3 go to the infirmary, right?

4 A. Yes.

10:50:55

5 Q. And you follow all this training that you are supposed
6 to, right? You drink lots of water?

7 A. Yes.

8 Q. And you testified a moment ago that you have used
9 the -- you have gone to respite one time?

10:51:09

10 A. Yes.

11 Q. Okay. When you are in the craft shop you go into that
12 air-conditioned area to get respite, right?

13 A. Yes.

14 Q. And you take cool-down showers?

10:51:18

15 A. Yes.

16 Q. Okay. So you are following a lot of these steps that
17 you have been trained to do?

18 A. Yes.

19 Q. And you have never had a heat-related illness; is that
20 correct?

10:51:29

21 A. That's correct.

22 Q. And you have never had to go to the infirmary because
23 of a heat-related illness?

24 A. That's correct.

10:51:39

25 Q. Okay. You have seen a lot of the other guys that live

1 at your unit. They also follow these steps, don't they?

2 **A.** Yes. I presume so.

3 **Q.** Well, you have seen some people following the steps,
4 haven't you?

10:51:54

5 **A.** Well, you see people drinking a lot of water. Yeah.

6 I mean, you know, with the cool towels, you are underneath
7 their fan or try to sit underneath one of the bigger fans
8 in the day room. Yes, I have seen that.

9 **Q.** And you have seen offenders using respite areas,

10:52:14

10 right?

11 **A.** Yes.

12 **Q.** Okay. There is a water cooler in the craft shop, too,
13 right?

14 **A.** No.

10:52:21

15 **Q.** There is not?

16 **A.** No.

17 **Q.** Is the water fountain right outside the craft shop?

18 **A.** There is one downstairs in the gym.

19 **Q.** Okay. And you carry a water bottle with you, correct?

10:52:37

20 **A.** No, I don't. I have one in the craft shop, yes.

21 **Q.** So when you are in the craft shop, you can refill some
22 kind of container; and that's -- and you can have water
23 with you?

24 **A.** Yes.

10:52:58

25 **Q.** Now, you testified earlier -- and we looked at the

1 screen -- about the medications that you take?

2 **A.** Yes.

3 **Q.** And you testified that you take medications that make
4 you more heat sensitive, correct?

10:53:10

5 **A.** Yes.

6 **Q.** Even though you take those medications, you haven't
7 had a heat-related illness?

8 **A.** Not yet, no.

10:53:19

9 **Q.** Okay. And that's because you follow the training that
10 you have been given? You do what you are supposed to do?

11 MR. MEDLOCK: Objection, Your Honor. I don't
12 think he is qualified to talk about if the training and
13 the mitigation measures are effective as a medical matter.

10:53:31

14 THE COURT: Well, I understand. I'm going to
15 allow the question.

16 **Q.** (By Ms. O'Leary) That's because you follow your
17 training with regard to heat?

18 **A.** Well, yes, I guess so.

10:53:47

19 **Q.** Okay. Now, you testified if it gets crowded in the
20 barbershop they will take you to another respite area,
21 correct?

22 **A.** Well, they did the day that I was there, yes.

10:54:02

23 **Q.** Okay. They didn't just tell you you can't have
24 respite anymore because we don't have room for your --
25 room for you in the barbershop? They didn't say that?

1 **A.** Yeah. They closed the barbershop down that day and
2 moved us over.

3 **Q.** Okay. Now, you testified that they sent you to the
4 hallway that's air-conditioned; and they were escorting an
10:54:16 5 offender through there; is that accurate?

6 **A.** Yes. Yes.

7 **Q.** Okay. When they were escorting an offender, was he
8 coming from administrative segregation --

9 **A.** Yes.

10:54:25 10 **Q.** -- or the high security?

11 **A.** Yes. Yes.

12 **Q.** So when they were walking him by, you had to turn
13 around and face the wall so that you would be out of the
14 way?

10:54:34 15 **A.** No. They -- we had to leave that completely and go
16 out in the hallway, the main hallway; and they close all
17 the bars. When they are moving what we call a PC, a
18 protective custody, you can be nowhere around them.

19 **Q.** Understood. Now, you have testified that it gets hot,
10:55:00 20 you know, at the Pack Unit; but you don't choose to go to
21 respite very often, do you?

22 **A.** No.

23 **Q.** Because you have the respite when you are in the craft
24 shop and you use that, correct?

10:55:11 25 **A.** That's -- yes. That's part of the reason.

1 Q. Okay. You also testified that you don't know of
2 anybody who goes to respite after about 10:30 at night?
3 Is that what you said earlier?

4 A. Yes. I don't -- I have not seen anybody.

10:55:25

5 Q. Okay. But when you have gotten training about respite
6 or when you have read the notices about respite, it
7 doesn't say that you can't go to respite after 10:30, does
8 it?

10:55:39

9 A. No. I have not seen anything that has a time on it at
10 all.

11 Q. Okay. Right. The notices just say if you want
12 respite, there is respite available. That's basically
13 what you are being trained about, right?

14 A. Yes.

10:55:49

15 Q. Okay. So you haven't been told by a training officer
16 or by any of the notices or anybody else that respite
17 closes at a certain time? Respite closes at 10:30, for
18 example. You haven't been told that?

19 A. No. No.

10:56:11

20 Q. Now, you also testified that you go to the infirmary
21 twice a day for your insulin?

22 A. Yes.

23 Q. And there is a line of people sometimes waiting to get
24 insulin?

10:56:19

25 A. Yes.

1 Q. So you are standing in the infirmary maybe for 20 or
2 30 minutes?

3 A. No. You are standing out in the hallway.

4 Q. I see. The infirmary is air-conditioned, correct?

10:56:33

5 A. Yes.

6 Q. There are some benches in there?

7 A. Yes.

8 Q. Now, you would agree it would be more comfortable
9 during the summer if there was air-conditioning in your

10:56:49

10 housing, right?

11 A. I would say so, yes.

12 Q. In fact, you think that it should be kept at
13 68 degrees through -- with an air-conditioner, right?

14 A. Personally, that's my comfort zone, yes.

10:57:03

15 Q. That seems pretty cold. Is that -- how do you know
16 68 degrees is the temperature that would keep you
17 comfortable?

18 A. I used to have to pay a light bill.

19 Q. And so you kept your home at 68 degrees?

10:57:20

20 A. Yes.

21 Q. Do you need it to be 68 degrees for you to be safe?

22 A. Probably really not.

23 Q. Now, the heat doesn't stop you from doing any
24 activities that you want to do, does it?

10:57:35

25 MR. MEDLOCK: Objection. That misstates his

1 testimony.

2 THE COURT: He can answer. He is a smart guy.
3 He can answer it.

4 Does it or doesn't it?

10:57:43

5 THE WITNESS: I might go out to the rec yard more
6 often in the summertime if it wasn't so hot.

7 Q. (By Ms. O'Leary) Right.

8 A. But other than that, no.

10:57:55

9 Q. Okay. The heat doesn't stop you from being able to
10 get to the places you need to go, like the chow hall or
11 the infirmary?

12 A. No.

13 Q. Okay.

14 A. No.

10:58:15

15 Q. I believe -- well, maybe you haven't testified to this
16 yet today. So I'll ask you. What time do you usually get
17 back to your dorm at the end of a workday?

18 A. Usually about 5:30 if the craft shop -- it depends on
19 the hours of the craft shop. I'll put it that way.

10:58:35

20 Q. Maybe 5:30 on a given day?

21 A. On some days, yes.

22 Q. So when you get back to your dorm at 5:30, what do you
23 do from that time until you go to bed?

10:58:53

24 A. Well, the first thing I do is take a shower. Then I
25 try to watch a little bit of news. And then I usually

1 call my family. And some of my family -- I have got a
2 bunch of grandkids that are in college that they are
3 not -- they don't have phones. I never know when to call
4 them. So we write a lot of letters back and forth.

10:59:14

5 **Q.** Okay. That's something you do in the evening times?

6 **A.** Yes.

7 **Q.** Okay. What if at 5:30, when you get off work every
8 day, TDCJ said you are not allowed to go to the dorm
9 anymore, you are not going to have that free time. Now

10:59:30

10 for three hours we are going to force you to sit in a
11 respite area. Would that take away your free time?

12 **A.** No. Not necessarily if it -- if it was -- if I didn't
13 have to stand up in the barbershop with 15 or 20 other
14 people or stand in the hallway with my nose against the
15 wall, if I could go somewhere and sit down.

10:59:52

16 **Q.** Right.

17 **A.** That -- that wouldn't be bad at all.

18 **Q.** Right. Let's assume that you can sit down in a
19 respite area for three hours; but you wouldn't get to sit
20 in your dorm and watch the news, right?

11:00:04

21 **A.** No.

22 **Q.** You wouldn't be making phone calls because you would
23 be in a respite area, correct?

24 **A.** Right.

11:00:11

25 **Q.** Maybe you could write letters if you brought a pen and

1 paper with you, right --

2 **A.** Yes.

3 **Q.** -- in a respite area?

4 **A.** I don't know of anybody that's tried that but, yes.

11:00:23

5 **Q.** Okay. So you wouldn't have that time in your dorm
6 to -- what about fixing your food? You like to eat in
7 your dorm, don't you?

8 **A.** Sometimes I do, yes.

9 **Q.** And that's food that you buy from the commissary?

11:00:36

10 **A.** Yes.

11 **Q.** Okay. So if you had to sit in a respite area, you
12 couldn't choose to eat that food, could you? It would
13 take up your time?

11:00:52

14 **A.** Well, I mean, I can always -- if I am in a respite
15 area for three hours where it's cool, then I would
16 probably have more of an appetite when I got back to my --
17 to my house. I mean, that's -- you know, I wouldn't think
18 it would be a bad thing, no.

11:01:13

19 **Q.** Okay. You understand, as it currently is at the Pack
20 Unit, that if you want to go to respite at 5:30, for
21 example, you can do that? All you have to do is ask?

22 **A.** Yes.

23 **Q.** Okay. So you don't need someone to force you to go to
24 respite because all you have to do is ask if you want to
25 go?

11:01:29

1 **A.** Yes.

2 MS. O'LEARY: Can I have just a moment, Your
3 Honor?

4 THE COURT: Sure.

11:01:53 5 MS. O'LEARY: I pass the witness.

6 THE COURT: Any redirect?

7 MR. MEDLOCK: Just a little bit, Your Honor. Can
8 I approach, Your Honor?

9 THE COURT: You may.

11:01:59 10 MR. MEDLOCK: I'm going to hand Mr. King
11 Plaintiffs' Exhibit 54. And let me -- its Bates number is
12 114923.

13 **REDIRECT EXAMINATION**

14 BY MR. MEDLOCK:

11:02:12 15 **Q.** Would you take a look at that, Mr. King. Do you see
16 that?

17 **A.** Yes.

18 **Q.** When did you first get the -- first see this document?

19 **A.** Maybe a month ago they passed them out and at night.

11:03:03 20 I was asleep when they passed them out. They said we had
21 to keep it on our person at all times.

22 **Q.** Is this the flyer that you mentioned that you were
23 given that has information about heat safety?

24 **A.** Yes.

11:03:17 25 **Q.** Does that flyer anywhere on it mention the respite

1 areas?

2 **A.** No.

3 **Q.** Does it mention anywhere the on-demand access to
4 showers?

11:03:27

5 **A.** No.

6 MS. O'LEARY: I'm sorry. What exhibit were you
7 looking at?

8 MR. MEDLOCK: It's Plaintiffs' Exhibit 54.

9 MS. O'LEARY: Thank you.

11:03:39

10 MR. MEDLOCK: Your Honor, we would like to move
11 to admit Plaintiffs' Exhibit 54.

12 (Plaintiffs' Exhibit Number 54 offered into evidence.)

13 MS. O'LEARY: No objection.

14 THE COURT: Admitted without objection.

11:03:46

15 (Plaintiffs' Exhibit Number 54 admitted into
16 evidence.)

17 **Q.** (By Mr. Medlock) Sir, you mentioned that the -- there
18 is a portion of the craft shop that has air-conditioning.
19 That's the woodworking part; is that right?

11:04:16

20 **A.** Yes.

21 **Q.** Could you spend two to three hours in the woodworking
22 part of the craft shop without being a woodworker?

23 **A.** No.

24 **Q.** How long is the most time you have ever spent in the
25 woodworking portion of the craft shop to cool off?

11:04:29

1 **A.** A few minutes at a time.

2 **Q.** If you would take a look at your screen there, there
3 is another portion of Plaintiffs' Exhibit 2. Is this a
4 photo of the woodworking portion of the craft shop?

11:04:54

5 **A.** Yes.

6 **Q.** What is the most people you have ever seen in that
7 portion of the craft shop?

8 **A.** Seven or eight.

11:05:13

9 **Q.** Do you have any qualifications or kind of hoops that
10 you have to jump through to be able to use the craft shop?

11 **A.** Well, you have to initially get on the list. You have
12 to maintain so much money. I think \$100 for leather work.
13 I'm not real sure about the woodworkers.

11:05:46

14 And then you wait until your name comes up on the --
15 to the top of the list. And then you are put in there
16 after -- if you come up. That somebody has to leave the
17 craft shop to create an opening for somebody else to come
18 in.

11:06:02

19 **Q.** Do you have to have any discipline history or lack
20 thereof to use the craft shop?

21 **A.** Yes. You have to have a clean disciplinary record at
22 least for a year.

23 **Q.** Is the craft shop open on weekends?

24 **A.** No.

11:06:12

25 **Q.** What hours has the craft shop been open most recently?

1 **A.** 7:00 to 3:00.

2 **Q.** I want to switch gears a little bit, sir. You
3 mentioned going to meals. Do most inmates in your dorm go
4 to the meals?

11:06:32 5 **A.** I would say most, yes.

6 **Q.** You were talking about some of the fans in your dorm.
7 Do the warehouse fans that you mentioned help with the
8 heat on the hottest days?

9 **A.** Yes, if you stand right in front of them.

11:06:53 10 **Q.** You mentioned putting the wet rag around your neck
11 helps for a short period of time. How long does that help
12 for?

13 **A.** Well, until it dries out, which is normally
14 ten minutes, something like that.

11:07:09 15 **Q.** Do you have any symptoms during the summer, like
16 headaches?

17 **A.** No, I don't -- I don't -- I guess drowsy. I get
18 lethargic. But I don't know that I have noticed any
19 headaches.

11:07:30 20 **Q.** Describe what your drowsiness or lethargy feels like
21 for the Court during the summer.

22 **A.** Well, it's just no energy. You are just, oh, well,
23 I'm not going to -- I'm not going to mess with going to
24 chow because it's just too big a hassle to go down there.

11:07:52 25 It's too hot in there. I'll just sit in here underneath

1 my fan and eat some Vienna sausage.

2 **Q.** I want to talk with you again about the respite areas.

3 Has anyone from TDCJ or UTMB ever trained you that you

4 should spend a certain amount of time in the respite areas

11:08:11

5 to give you a protection from the heat?

6 **A.** No.

7 **Q.** Sir, if the prison was required to be 88 degrees

8 inside, would that be a comfortable temperature for you?

9 **A.** Yes. Compared to 100, yes. That would be -- that

11:08:44

10 would be satisfactory to me.

11 **Q.** Why would that be a satisfactory temperature to you?

12 **A.** There is a big difference between 88 and 100. I mean,

13 it's just -- it starts getting unbearable when it gets

14 into the 90s. And so if -- I mean, I would like it

11:09:04

15 colder; but 88 would be fine.

16 **Q.** Your personal preference would be 68; but 88, you

17 think, would make the prison more bearable?

18 **A.** Yes.

19 MR. MEDLOCK: Your Honor, we would like to go

11:09:27

20 ahead and move to admit the portions of Plaintiffs'

21 Exhibit 2, which are the photo of the barbershop, the

22 photo of the lower administration hallway and the photo of

23 the craft shop. I have got the Bates numbers if opposing

24 counsel needs those.

11:09:43

25 (Plaintiffs' Exhibit Number 2 offered into evidence.)

1 MS. O'LEARY: We have no objection. But is that
2 the entire exhibit or is it only a portion of the exhibit?

3 MR. MEDLOCK: It's a portion of the exhibit.

11:09:53

4 MS. O'LEARY: Can we have the Bates numbers just
5 for the record?

6 MR. MEDLOCK: Absolutely. They are: The
7 barbershop is Bates 105348, the hallway is Bates Number
8 105351 and the craft shop is 105380.

11:10:13

9 (Plaintiffs' Exhibit Number 2 admitted into evidence
10 by agreement.)

11 THE COURT: Do you pass the witness?

12 MR. MEDLOCK: We pass the witness.

13 THE COURT: We're going to take a 15-minute
14 break. Thank you very much.

11:27:30

15 (Recess from 11:10 a.m. to 11:27 a.m.)

16 THE MARSHAL: All rise.

17 THE COURT: Keep your seats everybody. We'll
18 stand up in the morning for the Court trial, but not when
19 I come and go.

11:27:36

20 Okay. Do you wish to call another witness?

21 MR. EDWARDS: Yes -- yes, Your Honor. And just
22 so the record is clear, counsel for both parties have
23 neglected to invoke the rule for witness number one; but
24 we have now invoked the rule regarding all witnesses. And
25 my understanding is that no -- no more witnesses from TDCJ

11:27:49

1 are here.

2 THE COURT: Are we going to apply that to
3 experts, too? Normally --

4 MR. EDWARDS: No. My intent was not to apply it
5 to experts. So Dr. Reiger can certainly stay.

6 THE COURT: Well, I -- I just worry about
7 the -- there is a jury room we could put these good men
8 in.

9 MR. EDWARDS: These are all plaintiffs, Your
10 Honor.

11 THE COURT: Yeah, I know they are. You know
12 where our jury room is?

13 THE MARSHAL: Back here, Your Honor?

14 THE COURT: You are welcome to use that or
15 whatever other room you want.

16 THE MARSHAL: That's fine.

17 THE COURT: Okay. That's fine with me.

18 MR. EDWARDS: Okay.

19 MR. WARNER: Ms. Allison needs to go.

20 MR. MEDLOCK: Your Honor, I also neglected to
21 move to admit Plaintiffs' Exhibit 52. That's the poster
22 that went up about the respite areas. We would like to
23 move to admit Plaintiffs' Exhibit 52.

24 (Plaintiffs' Exhibit Number 52 offered into evidence.)

25 MS. O'LEARY: No objection.

1 THE COURT: Admitted without objection.

2 (Plaintiffs' Exhibit Number 52 admitted into
3 evidence.)

4 THE COURT: Okay. You may call your next
5 witness.

11:28:51

6 MR. MEDLOCK: Plaintiffs call Mr. Jackie Brannum.

7 THE COURT: Mr. Brannum, if you'll make your way
8 up here. Before you take your seat, sir, if you could
9 prepare to take the oath, please.

11:29:14

10 (Witness sworn by the case manager.)

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. That will be your seat right
13 there.

14 **JACKIE BRANNUM,**

11:29:31

15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. MEDLOCK:

18 **Q.** Good morning, sir.

19 **A.** Good morning.

11:29:33

20 **Q.** Can you hear me all right?

21 **A.** Yes, sir.

22 **Q.** Would you please state your name for the record, sir.

23 **A.** My name is Jackie Brannum.

24 **Q.** And how old are you, Mr. Brannum?

11:29:43

25 **A.** 63 years old.

1 Q. And where are you from originally?

2 A. I'm originally out of Oklahoma.

3 Q. And how long have you lived in Texas?

4 A. Ever since I was five years old.

11:29:54

5 Q. And how long have you been in TDCJ custody?

6 A. 22, 23 years.

7 Q. And how long have you been living at the Pack Unit?

8 A. Since March of 2001.

9 Q. Do you have a job at the Pack Unit?

11:30:13

10 A. Inside Squad, Medical Squad I.

11 Q. Is that a similar job to what you heard Mr. King talk
12 about earlier here today?

13 A. Yes, sir.

14 Q. What is your understanding on why you are on Inside
15 Medical Squad I?

11:30:27

16 A. Well, they told me I couldn't work anymore because I
17 passed out in the kitchen when I was working in the
18 kitchen.

19 Q. Tell the Court about that incident. When did that
20 happen?

11:30:40

21 A. Back in about 2013 or '14, I was working on the
22 serving line and I passed out and I come to in the
23 infirmary.

24 Q. Was it hot in the kitchen when you passed out?

11:30:58

25 A. Yes, sir.

1 Q. What did they tell you in the infirmary that
2 was -- had happened to you?

3 A. The only thing I found out is they said I had low
4 blood pressure.

11:31:08

5 Q. Did you see a doctor when you were in the infirmary?

6 A. I don't know. I didn't -- I stayed in a cool-down
7 area of the infirmary drinking cold water.

8 Q. Sir, what dormitory do you live in at the Pack Unit?

9 A. I've lived in all of them but the A wing and E wing.

11:31:28

10 Q. And where do you live currently?

11 A. 16 dorm.

12 Q. And which -- which wing is that a part of?

13 A. Delta wing.

14 Q. Sir, do you have any chronic medical conditions?

11:31:42

15 A. Yes, sir.

16 Q. Tell the Court what some of those are.

17 A. High blood pressure, diabetes, lower back.

18 Q. Sir, do you have a condition called schizoaffective
19 disorder?

11:31:57

20 A. Yes, sir.

21 Q. How long have you been diagnosed with diabetes?

22 A. It's been about 19, 20 years.

23 Q. How long have you been diagnosed with schizoaffective
24 disorder?

11:32:17

25 A. Since '95.

1 Q. Do you take any medication for your schizoaffective
2 disorder?

3 A. Yes, sir.

4 Q. What do you take?

11:32:28 5 A. I can't remember them.

6 Q. Is it a drug called risperidone?

7 A. That's one of them.

8 Q. If you are not taking your -- your medication for your
9 schizoaffective disorder, what happens to you?

11:32:46 10 A. I get to thinking about hurting myself and --

11 Q. Tell the Court what that is like.

12 A. Well, I hear voices; and they tell me to hurt myself,
13 take my own life.

14 Q. Do you have trouble sleeping when you are not taking
11:33:14 15 your medication?

16 A. Yes, sir.

17 Q. Other than thinking about hurting yourself, do you
18 feel any -- any other -- different in any other ways when
19 you are not taking your medication?

11:33:28 20 A. I just get real nervous and upset.

21 Q. Sir, have you ever been diagnosed with high blood
22 pressure?

23 A. Yes, sir.

24 Q. How long have you been diagnosed with high blood
11:33:41 25 pressure?

1 A. I don't remember offhand.

2 Q. Have you been diagnosed with high blood pressure ever
3 since you have been at the Pack Unit?

4 A. Yes, sir.

11:33:52

5 Q. So you have been -- you have been diagnosed with high
6 blood pressure at least 16 years; is that fair?

7 A. Yes, sir.

8 Q. Now, sir, for the record, do you use a walker?

9 A. Yes, sir.

11:34:06

10 Q. Tell the Court about why you use a walker.

11 A. Well, my lower back got a nerve pinched in it, I
12 think; and sometimes when I turn a certain way, I fall.

13 Q. Do you have trouble walking without the walker?

14 A. Sometimes.

11:34:27

15 Q. Have you had a fall recently?

16 A. I fell about three weeks ago.

17 Q. Tell the Court kind of what happened.

18 A. I was in the chow line and talking to some friends of
19 mine and I went to take a step forward and my left leg

11:34:46

20 collapsed out from under me.

21 Q. Did you hit the ground?

22 A. Two inmates grabbed me before I hit the ground.

23 Q. Do you take insulin for your diabetes?

24 A. Yes, sir.

11:35:04

25 Q. Do you know if any other inmates at the Pack Unit take

1 insulin for diabetes?

2 **A.** Yes, sir.

3 **Q.** How do you know that?

4 **A.** Because when I stand in the pill line or insulin line
5 early in the morning and late at night.

6 **Q.** Do you know if there are other gentlemen at the Pack
7 Unit who use a walker?

8 **A.** Yes, sir.

9 **Q.** Do you have an estimate that you can tell the Court
10 how many other guys at the Pack Unit use a walker like you
11 do?

12 **A.** Quite a few of us. I don't know how many, but there
13 is quite a few.

14 **Q.** And, sir, just for the -- for the record, does your
15 walker have a part that you can sit on with it like some
16 walkers do?

17 **A.** No, sir.

18 **Q.** On an average day, sir, not a summer day, how does
19 your diabetes kind of affect you?

20 **A.** It don't really affect me that much except when my
21 sugar level gets too low.

22 **Q.** What happens when your sugar level gets too low?

23 **A.** I don't remember what I do.

24 **Q.** Meaning you forget what you are doing or --

25 **A.** Yes, sir.

1 Q. Does it -- when your blood sugar levels get low, do
2 you have difficulty concentrating?

3 A. Yes, sir.

4 Q. Does your diabetes change what you eat at all?

11:36:33

5 A. Yes, sir.

6 Q. Sir, have you ever had cancer?

7 A. Skin cancer.

8 Q. When did you have that?

9 A. Back about two to three years ago.

11:36:48

10 Q. So you would have been at the Pack Unit 13 or 14 years
11 when you got the skin cancer?

12 A. Yes, sir.

13 Q. And you had been drinking the water at the Pack Unit
14 that whole time when you got the skin cancer?

11:37:02

15 A. Yes, sir.

16 Q. Sir, how tall are you?

17 A. 5'10".

18 Q. And about how much do you weigh, sir?

19 A. 230.

11:37:12

20 Q. Has a doctor ever counseled you that you should
21 probably lose some weight?

22 A. Yes, sir.

23 Q. Does carrying those extra pounds make it harder to
24 walk as well?

11:37:24

25 A. I don't think so.

1 Q. All right. Sir, I'm going to show you the same
2 exhibit that we showed Mr. King. This is a portion of the
3 Correctional Managed Healthcare UTMB policy with common
4 comorbidities that may affect heat tolerance.

11:37:48

5 Do you see that on the screen in front of you, sir?

6 A. Yes, sir.

7 Q. Can you tell me which of these conditions you have,
8 sir?

9 A. Diabetes. Let's see.

11:38:05

10 Q. You have a cardiovascular issue with your --

11 A. Blood pressure. Heart problems.

12 Q. -- blood pressure, correct?

13 A. Yes, sir.

14 Q. You have diabetes?

11:38:13

15 A. Yes, sir.

16 Q. And you have a psychiatric condition; is that right?

17 A. Yes, sir.

18 Q. All right. So you have three of the conditions on
19 that list?

11:38:24

20 A. Yes, sir.

21 Q. Now, Mr. Brannum, we talked a little bit. Do you take
22 a lot of prescription medications?

23 A. Yes, sir.

24 Q. Do you know how many you take?

11:38:38

25 A. I counted 14 last night.

1 Q. Let me show you a portion of your medical record.

2 This is a portion of Plaintiffs' Exhibit 21. It's TDCJ

3 Bates Number 121782. And, sir, I'll tell you that this is

4 a portion of your medical record from April the 5th of

11:39:00

5 this year. I'm going to show you two slides that have the

6 medications that you are taking on them. All right. Here

7 is the first slide. Are you taking all of those

8 medications, sir?

9 A. Yes, sir.

11:39:15

10 Q. And here is the second slide. Are you also taking all
11 of those medications?

12 A. Yes, sir.

13 Q. On an average, we already talked a little bit about
14 your psychiatric medications. If you don't take

11:39:31

15 your -- your blood pressure medications on an average day,
16 not a day during the summer, what do you kind of feel
17 like?

18 A. I don't notice any difference.

19 Q. What kind of symptoms do you have from your high blood
20 pressure? Do you know?

11:39:51

21 A. No, sir, I don't.

22 Q. Sir, I'm going to show you another portion of that
23 Correctional Managed Healthcare Policy. This is the list
24 of the medications that CMHCC says are associated with

11:40:22

25 heat stress. Do you see that in front of you?

1 A. Yes, sir.

2 Q. All right. You take risperidone. Is that an
3 antipsychotic medication?

4 A. Yes, sir.

11:40:33

5 Q. Okay. What other medications do you see on here that
6 you take? Do you take nortriptyline?

7 A. Yeah. I take nortriptyline.

11:41:06

8 Q. You take -- and that's -- I'm sorry. For risperidone
9 it is r-i-s-p-e-r-i-d, as in dog, o-n-e; and nortriptyline
10 is n-o-r-t, as in Tom, r-i-p, as in panda, t-y-l-i-n-e.

11 Sir, do you take a medication called propranolol?

12 A. I believe so, sir.

13 Q. And that's spelled P, as in panda, r-o-p, as in panda,
14 r-a-n, as in Nancy, o-l-o-l.

11:41:47

15 Do you take a medication called amlodipine, sir?

16 A. I don't remember.

17 Q. Sir, I want to read from your -- read another portion
18 of your medical record to you. This is Bates Number
19 TDCJ 122653; and I just want you to listen, sir, and tell
20 me if you have ever had this told to you by any of the
21 medical providers that you have seen.

11:42:17

22 This is the provider certifying, "I have also
23 discussed that some medications can affect the manner in
24 which the body reacts to excessive heat, especially in the
25 summer."

11:42:37

1 And it goes on, "No medication has an automatic heat
2 restriction. Offender patient was instructed to contact
3 nursing/security should they feel dizzy, confused or
4 overheated and will be checked for vital signs. Patient
5 understands that excessive heat can cause life-threatening
6 conditions and acknowledged understanding regarding the
7 need to drink plenty of water when the heat is extreme."

8 Did any of your doctors or other medical providers
9 tell you that, Mr. Brannum?

10 **A.** No, sir.

11 **Q.** You don't ever remember being told that by any
12 provider?

13 **A.** No, sir.

14 **Q.** Was that ever told to you by any of your
15 psychiatrists?

16 **A.** No, sir.

17 **Q.** Mr. Brannum, tell Judge Ellison what the heat during
18 the hottest parts of the summer feels like to you inside
19 your dormitory at the Pack Unit.

20 **A.** It feels like getting in a hot box in the summertime
21 where the sun is beating down on me.

22 **Q.** Describe what you mean by "a hot box" for the judge.

23 **A.** It's -- they used them in World War II, but they were
24 boxes big enough for you to just crawl into. And out on a
25 hot summer day, they would get awful hot.

1 Q. What does your body feel like on those hot summer days
2 at the Pack Unit?

3 A. I get weak feeling, nauseated and headaches.

4 Q. What do the headaches feel like?

11:44:18

5 A. It feels like the top of my head is going to blow off.

6 Q. What do the -- what does the nausea feel like?

7 A. Well, when I start to feel like my stomach gets upset,
8 I get to where I feel like I'm going to throw up.

9 Q. Do you notice your heart doing anything during the
10 summer months?

11:44:41

11 A. It seems like it beats faster.

12 Q. Do you have any difficulty breathing on the hot days?

13 A. Yes, sir.

14 Q. Tell the Court what that feels like.

11:44:50

15 A. It feels like something is wrapped around my chest and
16 is applying pressure to me where I can't breathe.

17 Q. Those symptoms you have just described, your heart
18 beating faster, the difficulty breathing, the headaches,
19 the nausea, do you feel those symptoms any other time of
20 year?

11:45:12

21 A. Not -- not near as bad as I do in the summertime.

22 Q. The -- the days you feel those symptoms, are you
23 drinking lots of water?

24 A. Yes, sir, I do.

11:45:26

25 Q. How much water do you think you drink during the

1 summer on an average day?

2 **A.** Well, I drank -- I figured it up one time -- close to
3 five gallons.

4 **Q.** On those days are you using your fan?

11:45:43

5 **A.** Yes, sir.

6 **Q.** Do you still feel some of those symptoms you described
7 when you are sitting in front of your fan?

8 **A.** Yes, sir.

11:45:58

9 **Q.** Now, are there showers in your portion of the
10 prison --

11 **A.** No, sir.

12 **Q.** -- the part where you live? Are you able to take a
13 shower whenever you feel like it?

14 **A.** No, sir.

11:46:09

15 **Q.** Has anyone from TDCJ ever told you that you can take a
16 shower, a cold shower whenever you feel like it in the
17 summer?

18 **A.** I just -- this year is the first time I have heard of
19 it.

11:46:22

20 **Q.** And when did you first learn of that?

21 **A.** About -- about a month ago.

22 **Q.** Have you ever actually tried to do that, take a shower
23 whenever you feel like it?

24 **A.** No, sir.

11:46:35

25 **Q.** Why not?

1 **A.** I went down on the pull-down showers and took a shower
2 on the pull-down showers, they call it; but I
3 ain't -- it's just too much of a hassle trying to get the
4 officers to let you take you down to the shower any time
5 you need to.

11:46:52

6 **Q.** What do you mean by it's too much of a hassle?

7 **A.** They always come up with some type of excuse why they
8 can't take you down there right then.

9 **Q.** Like what are some of the excuses you have been told?

11:47:07

10 **A.** Well, shower in the morning, they only shower three
11 times a day or I ain't got the keys to go in the shower
12 and get you in there.

13 **Q.** Sir, to you, does it feel like there is any difference
14 between the indoor temperatures and the outdoor
15 temperatures at the Pack Unit during the summer?

11:47:32

16 **A.** Yes, sir.

17 **Q.** Tell the Court what you mean by that.

18 **A.** Well, outside you get a little breeze. And inside the
19 building you don't get any. It's extremely hot in the
20 summertime.

11:47:47

21 **Q.** What do you do personally to -- to cope with the heat
22 during the summer, sir?

23 **A.** A lot of times I wear a T-shirt and sit down in front
24 of a fan.

11:48:00

25 **Q.** Sir, we heard Mr. King talk about a chill towel that

1 you can purchase from the commissary. Do you own one of
2 those?

3 **A.** Yes, sir.

4 **Q.** Does it help you at all?

11:48:11

5 **A.** No, sir.

6 **Q.** Have you ever lived in a TDCJ facility that was
7 air-conditioned, sir?

8 **A.** Yes, sir.

9 **Q.** Which one?

11:48:25

10 **A.** Jester 4.

11 **Q.** Do you know why you were at Jester 4?

12 **A.** Psych problems.

13 **Q.** Is Jester 4 the inpatient psychiatric facility at
14 TDCJ?

11:48:37

15 **A.** Yes, sir.

16 **Q.** Do you know why you particularly had to spend some
17 time at Jester 4?

18 **A.** I tried to commit suicide.

19 **Q.** How long were you at Jester 4?

11:48:47

20 **A.** About six years.

21 **Q.** Was that the last place you were before the Pack Unit?

22 **A.** Yes, sir.

23 **Q.** Before you came to TDCJ, did you spend any time in a
24 county jail?

11:49:03

25 **A.** Yes, sir.

1 Q. Were you there during the summer?

2 A. No, sir.

3 Q. Does anyone from TDCJ ever tell you what the indoor
4 temperature is at the Pack Unit?

11:49:16

5 A. No, sir.

6 Q. Sir, do you have any difficulty sleeping during the
7 summer?

8 A. Yes, sir.

11:49:26

9 Q. Tell the judge what it is like to try and sleep at the
10 Pack Unit during the summer.

11 A. Well, it gets real hot and -- and I get my sheet wet
12 or I climb down on the floor and sleep on the floor.

13 Q. And why do you sleep on the floor, sir?

11:49:51

14 A. Because it's cooler on the concrete than it is on the
15 mattress.

16 Q. Is it against the rules at the prison to sleep on the
17 floor?

18 A. I have had some officers tell me I couldn't do that.

11:50:06

19 Q. Do you ever see correctional officers having
20 difficulty with the heat in the summer?

21 A. Yes, sir.

22 Q. Tell the Court what you have seen that tells you that
23 they are having problems, too.

11:50:17

24 A. I have seen them sweat real heavy. Their shirts will
25 be soaking wet.

1 Q. Did you ever complain to an officer about feeling
2 dizzy in the summer?

3 A. Yes, sir.

4 Q. What -- what were you told when that happened?

11:50:35

5 A. Sent to sick hall and to the infirmary.

6 Q. Sir, have you ever been told by someone in the medical
7 department that you had a heat-related illness at the Pack
8 Unit?

9 A. I had a nurse one time tell me that.

11:50:53

10 Q. When did that happen?

11 A. Back about five years ago.

12 Q. Tell the judge what you remember about that incident.
13 What happened? How did you end up in the infirmary?

11:51:15

14 A. I was cleaning my house, my cubicle out; and I -- I
15 mop the floor by hand and everything. And I worked extra
16 hard cleaning -- cleaning it up. And it got -- it was in
17 the middle of the summertime. I know that. And I got
18 real hot and started having some trouble breathing and
19 stuff.

11:51:34

20 And they called for the infirmary. And infirmary come
21 down and wheel-chaired me to the infirmary and sat me
22 in -- underneath the air-conditioning and give me water to
23 drink and told me to drink a lot of water.

11:51:56

24 And the nurse told me, she said, you had a
25 heat-related illness; but I can't tell you that -- I can't

1 really tell you that because it's against TDCJ policies.

2 **Q.** Were you required to clean up your cubicle area by
3 TDCJ?

4 **A.** We are required to keep it clean.

11:52:13

5 **Q.** How did you get to the infirmary, that episode?

6 **A.** Down -- it's down by the chow hall.

7 **Q.** Were you taking -- did you -- were you able to walk?

8 **A.** No, sir. I was carried in a wheelchair down there.

9 **Q.** What did it feel like? What -- what did it feel like
10 in your body that you remember?

11:52:33

11 **A.** I was having a real hard time breathing and getting
12 dizzy and not -- not realizing what I was doing at times.

13 **Q.** How long did you spend in the infirmary that time?

14 **A.** About an hour and a half.

11:52:58

15 **Q.** What -- what did you do next? What happened next
16 after you were feeling better?

17 **A.** They sent me back to my dorm.

18 **Q.** Were you seen by a doctor or a physician's assistant?

19 **A.** No, sir. Just a nurse.

11:53:10

20 **Q.** What time of day did that happened? Do you remember?

21 **A.** About 3:00 in the afternoon.

22 **Q.** Were you drinking lots of water that afternoon?

23 **A.** Yes, sir.

24 **Q.** Were you sitting in front of the fan as much as you
25 were able to?

11:53:22

1 A. No, sir.

2 Q. Did you take a shower that morning?

3 A. Yes, sir.

4 Q. Now, sir, have you ever tried to use any of the
5 respite areas at the Pack Unit?

11:53:33

6 A. Yes, sir.

7 Q. Tell the judge about your experiences trying to use
8 the respite areas.

9 A. Well, I would be sitting in the barbershop and they'd
10 come and say I have to go to the infirmary or the
11 schoolhouse and they'd come by to tell you you have to go
12 from there and go somewhere else.

11:53:48

13 Q. And when did that happen that you were moved around
14 between respite areas?

11:54:03

15 A. Last year.

16 Q. So that would be the summer of 2016?

17 A. Yes, sir.

18 Q. About how many times have you tried to use the respite
19 areas?

11:54:13

20 A. I don't remember.

21 Q. Was it more than two?

22 A. Yes, sir.

23 Q. Have you ever been asked to use the respite area in
24 the lower administration hallway?

11:54:32

25 A. Yes, sir.

1 Q. Tell the judge about your experience using the respite
2 area in the lower administration hallway.

3 A. I was told to face the wall and stand there.

4 Q. Were you using your walker that day?

11:54:47

5 A. Yes, sir.

6 Q. How long were you able to stand there in the hallway?

7 A. About 20 minutes.

8 Q. Was it difficult for you to stand?

9 A. Yes, sir.

11:54:58

10 Q. Do officers always let you go to the respite areas
11 when you feel like it?

12 A. Sometimes. Sometimes not.

13 Q. Tell the judge about the sometimes not.

14 A. Well, I have asked them to go to a respite area; and
15 they say, Well, we can't do that right now. It's full up.

11:55:19

16 Q. Anything else you have been told when the officers
17 wouldn't let you go to a respite area?

18 A. I have been told so much anymore, I don't remember
19 them all.

11:55:39

20 Q. Fair enough. Have you ever tried to use the infirmary
21 as a respite area?

22 A. Yes, sir.

23 Q. What have you been told about using the infirmary as a
24 respite area by the medical staff?

11:55:58

25 A. We could come in there and stay for a little while,

1 but we had to leave within about 15 to 30 minutes.

2 **Q.** Have you ever been told that you have to submit to a
3 certain examination to stay in the respite area in the
4 infirmary?

11:56:16 5 **A.** Yes, sir.

6 **Q.** What have you been told that they need to examine for
7 you to stay in the respite area in the infirmary?

8 **A.** Take a core temperature.

9 **Q.** And what is your understanding of what it involves to
10 have a core temperature taken at the Pack Unit?

11 **A.** Take a thermometer and the nurse takes it and sticks
12 it up your rear end.

13 **Q.** They -- they take a rectal temperature?

14 **A.** Yes, sir.

11:56:41 15 **Q.** Now, sir, do the cool-down showers help with the heat
16 at the Pack Unit?

17 **A.** Just for a little bit.

18 **Q.** What do you mean by that?

19 **A.** Well, take a cool-down shower and about 15 minutes
11:57:03 20 later you are sweating all over again and -- and it's --
21 and you're sweating, getting hot all over.

22 **Q.** Does opening the windows help you in your dorm with
23 that at the Pack Unit?

24 **A.** No, sir.

11:57:26 25 **Q.** Why doesn't that feel like it helps?

1 **A.** Because just hot air comes blowing in.

2 **Q.** I'm going to show you some photos of the windows, sir.
3 Can you see that there?

4 **A.** Yes, sir.

11:57:40

5 **Q.** Does that look like the windows in your dormitory
6 looks?

7 **A.** Yes, sir.

8 **Q.** I'm going to show you a zoomed-in version of that same
9 picture. Can you see that, sir? Is that a little better?

11:57:58

10 **A.** Yes, sir.

11 **Q.** There is a kind of grate over the windows; is that
12 right?

13 **A.** No, sir.

11:58:10

14 **Q.** What is -- what is between the window -- what is in
15 the pane of the window when it's open?

16 **A.** The screen.

17 **Q.** The screen. Are bugs able to come through the screen?

18 **A.** Yes, sir.

19 **Q.** About how big is the hole in the screen?

11:58:25

20 **A.** About a sixteenth of an inch.

21 **Q.** Would it be big enough for a ladybug to crawl through?

22 **A.** No, sir.

23 **Q.** What kind of bugs come through the holes in the
24 screen?

11:58:37

25 **A.** There is a lot of little black ones, little white ones

1 and little green ones.

2 **Q.** Do the bugs bite that come through the screen?

3 **A.** Yes, sir.

4 **Q.** Is that painful?

11:58:49 5 **A.** It's irritating.

6 **Q.** Now, sir, you heard Mr. King testify about his
7 experience with the wellness checks. Have you had a
8 similar experience with these checks the officers do?

9 **A.** Just at night, when I am asleep, they wake me up and
11:59:16 10 ask me if I'm doing okay.

11 **Q.** When you are not asleep and they don't have to wake
12 you up, do they ever ask if you are doing okay?

13 **A.** No, sir.

14 **Q.** How often do you see officers doing those checks
11:59:28 15 during the summer?

16 **A.** Just during the count time.

17 **Q.** Do they do it at any different frequency than they do
18 it during the other parts of the year?

19 **A.** They just walk in the dorm and look around and walk by
11:59:48 20 everybody; and if everybody is up and moving around, they
21 don't say nothing. They just walk around and walk out of
22 the dorm.

23 **Q.** Now, sir, do you also go to the craft shop?

24 **A.** Yes, sir.

12:00:12 25 **Q.** What is your craft of choice?

1 **A.** Art.

2 **Q.** Is that done in the woodworking portion or a different
3 portion of the craft shop?

4 **A.** A different portion.

12:00:23 5 **Q.** Are you able to go into the woodworking portion
6 occasionally?

7 **A.** Yes, sir.

8 **Q.** Okay. What is the longest you have ever spent in the
9 woodworking portion to cool off?

12:00:38 10 **A.** About 15 or 20 minutes.

11 **Q.** Has anyone from TDCJ ever told you that you need to
12 spend two to three hours in air-conditioning during the
13 summer to protect you from heat-related illnesses?

14 **A.** No, sir.

12:00:54 15 **Q.** When you go to a respite area, are you allowed to talk
16 in there?

17 **A.** No, sir.

18 **Q.** Are you allowed to bring a book to read?

19 **A.** They said we can this year. I ain't tried it.

12:01:10 20 **Q.** Could you last year bring a book to read?

21 **A.** No, sir.

22 **Q.** Were you told that you couldn't bring a book to read
23 last year?

24 **A.** Yes, sir.

12:01:20 25 **Q.** Sir, why did you want to be a plaintiff in this case?

1 **A.** Well, I have done it for the disabled because there is
2 a bunch affected from the heat and in worse shape than
3 everybody else.

12:01:49

4 **Q.** Is being in the heat difficult for you during the
5 summer, sir?

6 **A.** Yes, sir.

7 MR. MEDLOCK: Pass the witness.

8 THE COURT: Okay. Cross?

9 **CROSS-EXAMINATION**

12:02:00

10 BY MR. WARNER:

11 **Q.** Thank you, Your Honor. Good morning, Mr. Brannum.

12 **A.** Good morning, sir.

13 **Q.** Sir, you take a number of medications, correct?

14 **A.** Yes, sir.

12:02:24

15 **Q.** And you walked through some of those with counsel?

16 **A.** Yes, sir.

17 **Q.** All right. And those medications are important to
18 your health, right?

19 **A.** Yes, sir.

12:02:32

20 **Q.** All right. If you didn't take them, that would be
21 dangerous?

22 **A.** Not really.

23 **Q.** No? They are important to your health, in any case?

24 **A.** Yeah.

12:02:42

25 **Q.** Okay. You collect those from the infirmary?

1 **A.** Yes, sir.

2 **Q.** All right. And that's something that you do yourself?

3 **A.** Yes, sir.

4 **Q.** No one forces you to come to the infirmary and pick
5 them up?

12:02:52

6 **A.** No, sir.

7 **Q.** And there is not a Pack Unit staff person who comes
8 and says it's time for you to go to the infirmary and pick
9 up your medication?

12:03:03

10 **A.** No, sir.

11 **Q.** All right. And there is not a Pack Unit staff person
12 who records whether you take your medication each day?

13 **A.** No, sir.

14 **Q.** You do that yourself?

12:03:11

15 **A.** Yes, sir.

16 **Q.** And you are capable of making that choice to take
17 those medications?

18 **A.** Yes, sir.

19 **Q.** You eat meals at the chow hall sometimes?

12:03:21

20 **A.** Yes, sir.

21 **Q.** Okay. Most days?

22 **A.** Yes, sir.

23 **Q.** And eating a good meal is also important to health,
24 right?

12:03:30

25 **A.** Yes, sir.

1 Q. All right. They provide three meals a day at the chow
2 hall?

3 A. Yes, sir.

4 Q. And when it's chow time, they call chow?

12:03:40

5 A. Yes, sir.

6 Q. And then you decide whether you want to go to the chow
7 hall for that meal, right?

8 A. Yes, sir.

9 Q. It's optional?

12:03:48

10 A. Yes, sir.

11 Q. You are not required to go to the chow hall at that
12 time?

13 A. No, sir.

14 Q. Okay. And so you walk there of your own accord each
15 day?

12:03:58

16 A. Yes, sir.

17 Q. And when you go, nobody stands there and watches you
18 clean your plate, right?

19 A. No, sir.

12:04:05

20 Q. You choose how much you want to eat?

21 A. Yes, sir.

22 Q. And yet you get your food, right?

23 A. Yes, sir.

24 Q. When it's hot, you drink a lot of water, right?

12:04:19

25 A. Yes, sir.

1 Q. Okay. I think you have said that you drink around
2 five gallons of water a day in the summer; is that right?

3 A. Yes, sir.

4 Q. All right. That really is a lot of water?

12:04:29

5 A. I drink a lot of water, sir.

6 Q. Out of curiosity, are you familiar with a condition
7 that can cause fainting from drinking too much water?

8 A. No, sir.

9 Q. No? No one has ever told you whether such a condition
10 may exist?

12:04:43

11 A. No, sir.

12 Q. Okay. Since at least 2015 there has been plentiful
13 ice water available to you in your dorm, right?

14 A. Yes, sir.

12:04:57

15 Q. All right. And we know that because five gallons of
16 water is a lot and you have to get it from somewhere,
17 right?

18 A. Yes, sir.

19 Q. And that water in the dorm is -- I think it's in a
20 10-gallon cooler, right?

12:05:10

21 A. Yes, sir.

22 Q. All right. And that cooler gets refilled, when it
23 gets close to being empty, quite frequently?

24 A. Yes, sir.

12:05:20

25 Q. All right. There are inmates responsible for doing

1 that?

2 **A.** Yes, sir.

3 **Q.** They do a good job, don't they?

4 **A.** Yes, sir.

12:05:26

5 **Q.** And none of that water that you drink is forced on
6 you, right?

7 **A.** No, sir.

8 **Q.** No one supervises you and makes you drink it?

9 **A.** No, sir.

12:05:35

10 **Q.** No one records that you are drinking?

11 **A.** No, sir.

12 **Q.** No one forces you to record that you are drinking?

13 **A.** No, sir.

14 **Q.** You just drink it?

12:05:44

15 **A.** I just -- yes, sir.

16 **Q.** And you are a representative of this class, right?

17 **A.** Yes, sir.

18 **Q.** And your cold water consumption is not in any way
19 dependent on prison staff recording that consumption?

12:06:00

20 **A.** No, sir.

21 **Q.** So you are capable of choosing to pick up your
22 medications?

23 **A.** Yes, sir.

24 **Q.** And you are capable of choosing to take your

12:06:11

25 medications?

1 **A.** Yes, sir.

2 **Q.** And you are capable of choosing to go to meals?

3 **A.** Yes, sir.

4 **Q.** And to eat meals?

12:06:16

5 **A.** Yes, sir.

6 **Q.** All without anyone forcing you?

7 **A.** Yes, sir.

8 **Q.** All right. Because you are capable of acting in your
9 own best interest, right?

12:06:24

10 **A.** Yes, sir.

11 **Q.** And because of that, you are able to drink ample water
12 without anyone telling you to?

13 **A.** Yes, sir.

14 **Q.** You know how to use the prison grievance system,
15 right?

12:06:36

16 **A.** Yes, sir.

17 **Q.** Okay. You fill out a form, correct?

18 **A.** Yes, sir.

19 **Q.** And it asks what happened?

12:06:43

20 **A.** Yes, sir.

21 **Q.** If you have a grievance; is that right?

22 **A.** Yes, sir.

23 **Q.** Okay. It asks when it happened?

24 **A.** Yes, sir.

12:06:52

25 **Q.** The form asks you to state when the incident happened;

1 is that right?

2 **A.** Yes, sir.

3 **Q.** Okay. And what the response was from the correctional
4 officer that you were dealing with; is that right?

12:07:02

5 **A.** Yes, sir.

6 **Q.** Okay. And what action the correctional officer took;
7 is that right?

8 **A.** Yes, sir.

12:07:11

9 **Q.** Okay. And then it gives you two pages to write down
10 what happened, right?

11 **A.** Front and back.

12 **Q.** Front and back. Okay.

13 **A.** Yes, sir.

14 **Q.** So a front page and a back page, two pages, right?

12:07:19

15 **A.** Yes, sir.

16 **Q.** Okay. And it gives you some space to ask to state
17 what you want done about it?

18 **A.** Yes, sir.

12:07:35

19 **Q.** And then there is a space for -- for the Pack Unit to
20 respond to it or for the officer to respond to it, right?

21 **A.** Yes, sir.

22 **Q.** Okay. Now, you spoke a little bit before about an
23 incident that happened in the kitchen; is that right?

24 **A.** Yes, sir.

12:08:00

25 **Q.** All right. And what happened is that you became faint

1 in the kitchen; is that right?

2 **A.** Yes, sir.

3 **Q.** And you were working there?

4 **A.** Yes, sir.

12:08:07 5 **Q.** All right. And you had been working in the kitchen
6 for a while at that time, right?

7 **A.** Yes, sir.

8 **Q.** How -- how many hours had you been in the kitchen?

9 **A.** About 1:00 in the morning.

12:08:19 10 **Q.** Okay. And what time did the incident happen
11 approximately?

12 **A.** About 6:00.

13 **Q.** So you had been there about five hours?

14 **A.** Yes, sir.

12:08:27 15 **Q.** And there are -- there is a lot of cooking apparatus
16 in the kitchen, right?

17 **A.** Yes, sir.

18 **Q.** There is stoves?

19 **A.** No, sir.

12:08:35 20 **Q.** No? No stoves?

21 **A.** There's no stoves, just a rotisserie oven and steam
22 pots.

23 **Q.** Okay. So there is a rotisserie oven and there is pots
24 and those things that are used to cook food?

12:08:47 25 **A.** Yes, sir.

1 Q. And they get really hot?

2 A. Yes, sir.

3 Q. Okay. And you were working in that area?

4 A. No, sir. I was working on the service line.

12:08:57

5 Q. Okay. All right. And when you fainted you -- you
6 were provided immediate medical care, correct?

7 A. Yes, sir.

8 Q. In the infirmary?

9 A. Yes, sir.

12:09:11

10 Q. Is that right? And you saw medical personnel?

11 A. Yes, sir.

12 Q. All right. And you were not diagnosed with a -- a
13 heat injury at that time, were you?

14 A. No, sir.

12:09:19

15 Q. All right. And, in fact, they took your temperature
16 at that time; and it was 97 degrees, right?

17 A. I believe so, sir.

18 Q. All right. You know that the Pack Unit today offers
19 cool-down showers to inmates, right?

12:09:42

20 A. Yes, sir.

21 Q. All right. And since at least 2015, when it's hot,
22 you personally take at least one cool-down shower each
23 day, right?

24 A. Yes, sir.

12:09:53

25 Q. Okay. In 2015, at least, you took most of those

1 between the time of 7:00 and 9:00 p.m.; is that right?

2 **A.** Yes, sir.

3 **Q.** Is that when -- still when you take them?

4 **A.** Yes, sir.

12:10:03 5 **Q.** All right. So each day between 7:00 and 9:00 p.m.
6 when it's hot, you take a cold shower; is that right?

7 **A.** Yes, sir.

8 **Q.** At least once?

9 **A.** Yes, sir.

12:10:11 10 **Q.** All right. And it does help you cool down, right?

11 **A.** Yes, sir.

12 **Q.** Now, today at the Pack Unit, scheduled cool-down
13 showers are offered at least twice each day, right?

14 **A.** Yes, sir.

12:10:22 15 **Q.** All right. Those are on the schedule. They are
16 called out, right?

17 **A.** Yes, sir.

18 **Q.** All right. And what happens is that cool-down shower
19 time is called out to the dorm, right?

12:10:34 20 **A.** Yes, sir.

21 **Q.** And if you choose to go, you can voluntarily get up at
22 that time?

23 **A.** Yes, sir.

24 **Q.** You can voluntarily go to the shower area, right?

12:10:43 25 **A.** Yes, sir.

1 Q. You can voluntarily take a cool shower?

2 A. Yes, sir.

3 Q. All right. And the water in those showers really is
4 cold, right?

12:10:50

5 A. Yes, sir.

6 Q. Okay. Now, you know that today these cold showers are
7 also provided upon request, right?

8 A. I didn't know that until about a month ago, sir.

9 Q. Okay. Well, today is later than a month ago, right?

12:11:07

10 A. Yes, sir.

11 Q. Okay. So is it true then that today cold showers are
12 provided upon the request of the inmate, and you know
13 that?

14 A. Yes, sir.

12:11:15

15 Q. That's true?

16 A. (Nodding head up and down.)

17 Q. Okay. That's true?

18 A. Yes, sir.

19 Q. Thank you. So all you need to do is ask, right?

12:11:25

20 A. Yes, sir.

21 Q. Okay. Is that something you have done, asked to take
22 an extra cool-down shower?

23 A. No, sir.

24 Q. Now, generally you could choose not to take the

12:11:54

25 extra -- the cool-down showers that you do take, right?

1 A. Yes, sir.

2 Q. But you do take them?

3 A. Yes, sir.

4 Q. And you take them because it's effective at cooling
5 you down?

12:12:04

6 A. It cools me down, yes, sir.

7 Q. All right. So you could cool yourself down more if
8 you chose to take additional showers; is that right?

9 A. Yes, sir.

12:12:21

10 Q. And you said earlier that sometimes asking for an
11 extra shower is too much of a hassle. Do you recall
12 saying that?

13 A. Yes, sir.

14 Q. Okay. Now, I wasn't quite clear. Were you stating
15 then that somebody told you that you couldn't take an
16 extra shower?

12:12:47

17 A. No, sir.

18 Q. Okay. So you understand that if you want to take an
19 extra cool-down shower, you will be allowed to do so,
20 right?

12:13:01

21 A. Yes, sir.

22 Q. All right.

23 THE COURT: Okay. I thought what he said was he
24 wasn't always allowed to go to the respite areas. That's
25 what I heard. Have there also been instances where you

12:13:11

1 are not allowed to take a shower?

2 THE WITNESS: No, sir.

3 THE COURT: Okay. So there are times when the
4 guards say there is no capacity in the respite areas for
5 you to go; is that right?

6 THE WITNESS: Yes, sir.

7 THE COURT: Okay. All right. I misunderstood.
8 Okay.

9 Q. (By Mr. Warner) Now, you testified before, I think,
10 that -- that you get hot again after you take the shower;
11 is that right?

12 A. Yes, sir.

13 Q. Okay. And you mean that you feel hot, right?

14 A. I start sweating again, sir.

15 Q. Right. Okay. Now, obviously, you are not a doctor,
16 right?

17 A. No, sir.

18 Q. And you are not a scientist?

19 A. No, sir.

20 Q. And you are not an authority on how cold water makes
21 you cool, right?

22 A. No, sir.

23 Q. Okay. So after you take a cold shower and when you
24 are back in a hot environment you -- the air may feel hot
25 to you again, right?

1 **A.** Yes, sir.

2 **Q.** Okay. But that does not mean that your core body
3 temperature has risen back to where it was before the
4 shower, does it?

12:14:34

5 **A.** No, sir.

6 MR. MEDLOCK: Objection. Lack of foundation.
7 He's not -- he would have no way to know what his core
8 body temperature is, Your Honor.

12:14:43

9 THE COURT: Now, I can appreciate that. I'll
10 know to discount the answer appropriately.

11 MR. MEDLOCK: Thank you, Your Honor.

12 **Q.** (By Mr. Warner) Sir, you know if your body
13 temperature is at a normal level, then you don't have a
14 heat illness, right?

12:15:02

15 **A.** Yes, sir.

16 **Q.** So if the cool shower is effective at bringing your
17 temperature down to that level, that normal level, even if
18 the air feels hot to you afterwards, it's been effective
19 in keeping your body temperature safe, right?

12:15:16

20 MR. MEDLOCK: Your Honor, I'd like to make the
21 same objection, just for the record. I understand you'll
22 probably rule the same way, but I don't think that he has
23 the necessary knowledge to tell you what the effect of a
24 cool-down shower would be on his core body temperature.

12:15:29

25 THE COURT: Your response.

MR. WARNER: Well, he has testified that he knows that it can bring his temperature down; and he knows the regular temperature is safe. I think that is sufficient information.

12:15:40 THE COURT: Do you know any way to tell whether your body temperature has come down after you have taken a cold shower?

THE WITNESS: Not really, sir.

THE COURT: Okay. All right. Let's move on.

12:15:55 Q. (By Mr. Warner) There are air-conditioned areas in the prison, correct?

A. Yes, sir.

Q. And many of those are designated as respite areas?

A. Yes, sir.

12:16:17 Q. All right. And many of those have "respite" written on the door, right?

A. Yes, sir.

Q. Painted on the door?

A. Yes, sir.

12:16:23 Q. Okay. And you have seen that?

A. Yes, sir.

Q. The offenders barbershop is air-conditioned, right?

A. Yes, sir.

Q. And designated as a respite area?

12:16:35 A. Yes, sir.

1 Q. All right. The education wing is air-conditioned?

2 A. Yes, sir.

3 Q. And it's designated as a respite area?

4 A. Yes, sir.

12:16:43

5 Q. And that's a large area, right, the education wing?

6 A. Yes, but --

7 Q. I'm sorry?

8 A. Yes, sir.

12:16:54

9 Q. Okay. The infirmary, the whole medical area is

10 air-conditioned?

11 A. Yes, sir.

12 Q. And that's designated as a respite area?

13 A. Yes, sir.

14 Q. All right. Lower administration is air-conditioned?

12:17:02

15 A. Yes, sir.

16 Q. And that's designated as a respite area as well?

17 A. Yes, sir.

18 Q. All right. The law library is part of education,

19 right?

12:17:09

20 A. Yes, sir.

21 Q. All right. So that's part of the education area

22 that's air-conditioned, right?

23 A. Yes, sir.

24 Q. Okay. And there is many more air-conditioned areas

12:17:18

25 that are also marked as respite areas, right?

1 A. Yes, sir.

2 Q. Okay. Now, there is a poster in your dorm that says
3 "Notice to Offenders," right?

4 A. Yes, sir.

12:17:37 5 Q. Okay. It's on the bulletin board?

6 A. Yes, sir.

7 Q. All right.

8 MR. WARNER: Can I get 36 for identification on
9 the screen. All right.

12:17:50 10 Q. (By Mr. Warner) Have you seen this sign before?

11 A. Yes, sir.

12 Q. All right. And you pass by that sign every day?

13 A. Yes, sir.

14 Q. And this is a correct picture of the notice that's
15 there on your door?

12:18:06

16 A. Yes, sir.

17 Q. All right.

18 MR. WARNER: I think there is a plaintiffs'
19 version of this that's already been admitted, Your Honor;
20 but I'll go ahead and move for it to be admitted.

12:18:14

21 (Defendants' Exhibit Number 36 offered into evidence.)

22 THE COURT: Any objection?

23 MR. MEDLOCK: No objection, Your Honor.

24 THE COURT: Admitted without objection.

12:18:19

25 (Defendants' Exhibit Number 36 admitted into

1 evidence.)

2 **Q.** (By Mr. Warner) And what this document says that you
3 see every day is that areas are being made available for
4 offenders that are experiencing difficulty due to heat,
5 right?

12:18:30

6 **A.** Yes, sir.

7 **Q.** And it lists some of the areas?

8 **A.** Yes, sir.

9 **Q.** It says, "If you are experiencing difficulty due to
10 the heat, please notify a staff member immediately,"
11 right?

12:18:35

12 **A.** Yes, sir.

13 **Q.** Okay. And so this notice alerts inmates that they can
14 access an air-conditioned room by asking a staff member,
15 right?

12:18:48

16 **A.** Yes, sir.

17 **Q.** Okay. Now, you yourself access an air-conditioned
18 area in the craft shop almost every day, right?

19 **A.** Yes, sir.

20 **Q.** And in the craft shop, you don't really even need to
21 ask permission; is that right?

12:19:00

22 **A.** No.

23 **Q.** That's correct?

24 **A.** That's right, sir.

25 **Q.** Okay. You just go to the air-conditioned area if you

12:19:09

1 feel the need, right?

2 **A.** Yes, sir.

3 **Q.** All right. You stay there for however long you feel
4 you need to stay there, right?

12:19:20 5 **A.** Yes, sir.

6 **Q.** Okay. No one in the craft shop has ever told you to
7 stop doing that, right?

8 **A.** No, sir.

9 **Q.** All right. No one at the craft shop has ever told you
12:19:29 10 that you spent too much time in the air-conditioned area?

11 **A.** No, sir.

12 **Q.** And you are able to cool off that way?

13 **A.** Yes, sir.

14 **Q.** And you spend how much time in the craft shop on a
12:19:40 15 weekly basis?

16 **A.** Just about every day.

17 **Q.** Every day between what hours?

18 **A.** From 7:00 to 3:00.

19 **Q.** 7:00 in the morning until 3:00 in the afternoon?

12:19:54 20 **A.** Yes, sir.

21 **Q.** Do you agree with me that those are some of
22 the -- those include some of the hottest hours of the day?

23 **A.** Yes, sir.

24 **Q.** All right. During those hours, that air-conditioning
12:20:04 25 in the craft shop is right there for you whenever you wish

1 to use it?

2 **A.** Yes, sir.

3 **Q.** How cold do you set that air-conditioner?

4 **A.** I don't know how cold it is.

12:20:23 5 **Q.** Is it set -- is it set in the 70s?

6 **A.** I -- I guess it would be.

7 **Q.** So it's set far below 88 degrees?

8 **A.** Yes, sir.

12:20:40 9 **Q.** All right. So it's not just hot air back there in the
10 craft shop, it's actually cold air, right?

11 **A.** Yes, sir.

12 **Q.** All right. But as we said, there are lots of other
13 respite areas other than the craft shop, right?

14 **A.** Yes, sir.

12:21:02 15 **Q.** Okay. And they are accessible to inmates upon
16 request, right?

17 **A.** Not all of them, sir.

18 **Q.** Not all of the areas?

19 **A.** Right, sir.

12:21:10 20 **Q.** All right. So you don't have a choice necessarily of
21 which of these respite areas that you'll get to go to?

22 **A.** No, sir.

23 **Q.** But a respite area is available upon request, right?

24 **A.** Yes, sir.

12:21:23 25 **Q.** Okay. Now, you stated earlier that you have been told

1 a couple of times, I think, that you cannot go to respite
2 right then because staff is busy or the area is busy; is
3 that right?

4 **A.** Yes, sir.

12:21:38 5 **Q.** Okay. Which officer told you that?

6 **A.** I don't remember their name, sir.

7 **Q.** How long ago was it?

8 **A.** Last year.

9 **Q.** In 2016?

12:21:48 10 **A.** 2016.

11 **Q.** How many times did that happen?

12 **A.** About three times.

13 **Q.** Three times during the course of 2016. Has that ever
14 happened this year?

12:21:56 15 **A.** Not yet, sir.

16 **Q.** All right. Where were you when it happened the first
17 time?

18 **A.** I was at my dorm.

19 **Q.** Is that where you were the other two times as well?

12:22:08 20 **A.** Yes, sir.

21 **Q.** All right. What time of day was it?

22 **A.** Right after lunch.

23 **Q.** And you don't -- you don't recall who you spoke to?

24 **A.** No, sir.

12:22:18 25 **Q.** All right. Did you make a second request at that

1 time? Did you ask again?

2 **A.** About 30 minutes later.

3 **Q.** 30 minutes later were you given access to a respite
4 area?

12:22:30

5 **A.** No, sir.

6 **Q.** Okay. Did you ask a third time?

7 **A.** No, sir.

8 **Q.** All right. You didn't ask a third time. Do you
9 remember who you asked the second time?

12:22:38

10 **A.** The same guard.

11 **Q.** The same guard but you don't remember what his name
12 was?

13 THE COURT: I think he said he doesn't remember.

14 **Q.** (By Mr. Warner) Did you file a grievance about this
15 incident?

12:22:47

16 **A.** No, sir.

17 **Q.** All right. You know that that is the mechanism
18 through which you document something happening to you
19 that's not supposed to happen in a prison, right?

12:22:59

20 **A.** Yes, sir.

21 **Q.** But you chose not to file a grievance?

22 **A.** Yes, sir.

23 **Q.** So there is no record of this incident occurring,
24 right?

12:23:05

25 **A.** Right, sir.

1 Q. Okay. And you can't remember the person's name so you
2 can't rebut --

3 THE COURT: He said that. He said that. He said
4 he can't remember.

12:23:18

5 MR. WARNER: I'm sorry, Your Honor.

6 Q. (By Mr. Warner) How far away is your dorm from the
7 barbershop, the offenders barbershop?

8 A. I guess about 100 yards.

12:23:44

9 Q. 100 yards. Do you walk that distance on a regular
10 basis --

11 A. Yes, sir.

12 Q. -- coming and going in the prison?

13 A. Yes, sir.

14 Q. You do?

12:23:49

15 A. Yes, sir.

16 Q. Okay. So it's not a lengthy distance for you to walk?

17 A. No, sir.

18 Q. All right. The lower admin area, is that also near
19 the offenders barbershop?

12:24:02

20 A. Yes, sir.

21 Q. The education building, is that -- I'm sorry, the
22 education wing, is that also nearby?

23 A. It's further down the hall, sir.

24 Q. Okay. It's in the same hall?

12:24:12

25 A. Yes, sir.

1 Q. How much further down the hall is it?

2 A. About 50 yards.

3 Q. So these areas are all accessible to you? They are
4 not far from your dorm?

12:24:23

5 A. Right, sir.

6 Q. You spoke about an incident in which you felt dizzy
7 and complained to an officer. Do you recall that?

8 A. Yes, sir.

12:25:15

9 Q. That was a different incident from the incident in the
10 kitchen; is that right?

11 A. Yes, sir.

12 Q. Okay. And you saw medical in that incident as well?

13 A. Yes, sir.

12:25:31

14 Q. All right. And the officer sent you to the infirmary
15 at that point, right?

16 A. Yes, sir.

17 Q. All right. Now, you told the officer that you felt
18 dizzy, right?

19 A. Yes, sir.

12:25:39

20 Q. You didn't tell the officer that you felt hot?

21 A. No, sir.

22 Q. Okay. So the officer did the right thing by sending
23 you to the infirmary?

24 A. Yes, sir.

12:25:51

25 Q. It was a good idea that he had to send you there?

1 **A.** Yes, sir.

2 **Q.** All right. And he might have done different if you
3 had told him that you were hot instead of dizzy, right?

4 **MR. MEDLOCK:** Objection, Your Honor. We can't
5 really know what the officer would or would not have done,
6 and Mr. Brannum certainly wouldn't know.

7 **THE COURT:** I sustain. Sustained.

8 **Q.** (By Mr. Warner) You don't use the air-conditioning in
9 the craft shop during the winter, do you?

10 **A.** No, sir.

11 **Q.** Okay. You don't take cool -- you don't take cold
12 showers in the winter?

13 **A.** No, sir.

14 **Q.** All right. And do you drink as much water in the
15 winter?

16 **A.** Not near as much.

17 **Q.** So you are able to tell when it's hot --

18 **A.** Yes, sir.

19 **Q.** -- and when you need to do those things?

20 **A.** Yes, sir.

21 **Q.** All right. You don't need anyone to tell you that?

22 **THE COURT:** I think that's evident.

23 **Q.** (By Mr. Warner) This year you've already accessed the
24 respite area on some occasions?

25 **A.** Yes, sir.

1 Q. All right. And this year, 2017, you have been allowed
2 to bring a book with you?

3 A. Yes, sir.

4 Q. You have never been diagnosed with heat cramps while
5 at the Pack Unit, correct?

6 A. Right, sir.

7 Q. You have never been diagnosed with heat exhaustion?

8 A. No, sir.

9 Q. And you have never been diagnosed with heatstroke?

10 A. No, sir.

11 MR. WARNER: Pass the witness. Thank you.

12 THE COURT: Thank you. We don't have any
13 redirect, do we?

14 MR. MEDLOCK: Very little, Your Honor.

15 THE COURT: Okay. All right.

16 **REDIRECT EXAMINATION**

17 BY MR. MEDLOCK:

18 Q. Mr. Brannum, we talked about how they call for chow
19 and they call for time for cool-down showers. Does anyone
20 at TDCJ say that it's time for respite? Do they call for
21 respite?

22 A. No, sir.

23 Q. If they did, would you go?

24 A. Yes, sir.

25 Q. Is chow on a schedule?

1 **A.** Yes, sir.

2 **Q.** Is cool-down showers on a schedule?

3 **A.** Yes, sir.

4 **Q.** If respite was on a schedule, would you go?

12:28:55 5 **A.** Yes, sir.

6 **Q.** Okay. How long does the cold shower help?

7 **A.** About 15 or 20 minutes.

8 **Q.** Okay. And then what does it feel like after that?

9 **A.** It feels like walking into a hot box.

12:29:09 10 MR. MEDLOCK: We'll pass the witness, Your Honor.

11 THE COURT: We'll take a lunch break. We'll
12 resume at 1:15.

13 THE MARSHAL: All rise.

14 (Recess from 12:29 p.m. to 1:21 p.m.)

01:27:15 15 MR. EDWARDS: Your Honor, could we address
16 briefly?

17 THE COURT: What would you like to address?

18 MR. EDWARDS: Just before Mr. Pennington takes
19 the stand, following his testimony would it be permissible
01:27:24 20 for Mr. Medlock and myself to have a brief conversation
21 with Mr. Cole in private outside in that room? We talked
22 with the marshals.

23 THE COURT: Any objection to that?

24 MR. WARNER: None, Your Honor.

01:27:34 25 THE COURT: That will be fine.

1 MR. EDWARDS: Thank you.

2 THE COURT: Okay. Are we ready?

3 MR. MEDLOCK: We're ready, Your Honor.

4 THE COURT: Okay. You may inquire.

01:28:14 5 MR. MEDLOCK: Plaintiffs call Thomas Pennington.

6 THE COURT: Sir, if you could raise your
7 right -- well, you are in manacles. You don't have to
8 raise your right hand. But if you can listen to the oath;
9 and if you can answer affirmatively, please say "I do."

01:28:32 10 (Witness sworn by the case manager.)

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. You may inquire.

13 THE WITNESS: Thomas Ray Pennington.

14 **THOMAS RAY PENNINGTON,**

01:28:39 15 having been first duly sworn, testified as follows:

16 **DIRECT EXAMINATION**

17 BY MR. MEDLOCK:

18 **Q.** Good to see you, Mr. Pennington. Can you hear me all
19 right there?

01:28:47 20 **A.** Yes, sir.

21 **Q.** All right. If you can't hear me, just let me know. I
22 think you already helped us out by stating your name for
23 the record. But you are Thomas Pennington; is that right?

24 **A.** Yes, sir.

01:28:54 25 **Q.** All right. How old are you, Mr. Pennington?

1 **A.** 52.

2 **Q.** And where are you from originally?

3 **A.** Houston.

4 **Q.** And how long have you been incarcerated in TDCJ?

01:29:04

5 **A.** 28 going on 29.

6 **Q.** And how long is your sentence, sir?

7 **A.** Life.

8 **Q.** How long have you lived at the Pack Unit?

9 **A.** The last 11 years.

01:29:18

10 **Q.** Do you have a job at the Pack Unit?

11 **A.** No, sir.

12 **Q.** What do you do all day -- what do you -- how do you
13 spend your days?

14 **A.** Mainly just in the cubicle.

01:29:32

15 **Q.** Now, sir, I'm going to ask a few indelicate questions.
16 How tall are you?

17 **A.** 5'8".

18 **Q.** And how much do you weigh, sir?

19 **A.** About 505 or 510, somewhere in there.

01:29:48

20 **Q.** Is that 510 pounds, sir?

21 **A.** Yes. Yes, sir.

22 **Q.** Do you use a cane to walk?

23 **A.** Yes, sir.

24 **Q.** And I see today that you are sitting in a wheelchair;
25 is that right?

01:29:56

1 **A.** Yes, sir.

2 **Q.** Why are you in a wheelchair today, sir?

3 **A.** Just out here trying to transport me around here
4 today.

01:30:04

5 **Q.** And you are sitting in the wheelchair instead of the
6 witness stand, in the witness box; is that right, sir?

7 **A.** Yes, sir.

8 **Q.** And why are you in the wheelchair instead of the
9 witness stand chair? Are you too large for the witness

01:30:16

10 stand chair?

11 **A.** No, sir.

12 **Q.** Okay. I'll move on. How did you get here today, sir?

13 **A.** In a wheelchair van.

14 **Q.** Okay. Were you able to ride with the rest of the
15 plaintiffs?

01:30:26

16 **A.** No, sir.

17 **Q.** Were you able to get any sleep last night?

18 **A.** A little bit. Not much.

19 **Q.** Will you tell the judge why that was?

01:30:39

20 **A.** Because I had to wait until it cooled off to get some
21 air. It was hot.

22 **Q.** The heat kept you from sleeping last night?

23 **A.** Yes, sir. I have sleep apnea. It's kind of hard to
24 sleep.

01:30:50

25 **Q.** Tell the -- tell the judge a little bit about your

1 sleep apnea. How long have you had it? What effect does
2 it have on your ability to sleep?

3 **A.** I done had sleep apnea about the last -- I was
4 diagnosed about 15 years ago. And then, I stopped
01:31:13 5 breathing -- I stopped breathing so many times a night
6 where that's the reason I got it. And if I don't -- if
7 it's hot, it's hard to -- it's hard to breathe when you
8 have got the machine on and the air blowing and it's hard
9 -- it's hard to breathe when it's hot.

01:31:33 10 **Q.** Do you have that problem with sleeping even in the
11 colder parts of -- of the year?

12 **A.** No, sir. I sleep real fine.

13 **Q.** Okay. Do you use a -- a machine to help you sleep?

14 **A.** Yes, sir.

01:31:42 15 **Q.** What is that machine called?

16 **A.** CPAP.

17 **Q.** A CPAP machine?

18 **A.** That's what I call it. I don't --

19 THE COURT: Yeah. I know what that is.

01:31:53 20 **Q.** (By Mr. Medlock) All right. Mr. Pennington, do you
21 have any difficulties using the CPAP machine in the
22 summer?

23 **A.** Yes, sir.

24 **Q.** Tell the judge why.

01:32:02 25 **A.** Because why is: The mask, when you put your mask on

1 and you are trying to breathe, the mask is sweating all
2 between and you have got to tighten it up and tighten it
3 up. It's very -- it's very uncomfortable.

4 **Q.** Now, sir, do you have any chronic medical conditions?

01:32:23

5 **A.** Yes, sir.

6 **Q.** Tell the judge what medical conditions you have.

7 **A.** I have got -- what you call it? I have got edema left
8 leg, sleep apnea, the high blood pressure, I throw blood
9 clots a lot and I -- what else? Sleep, edema, high blood
10 pressure and -- yes.

01:32:47

11 **Q.** Do you have diabetes?

12 **A.** Yes, sir. Yes, sir. I know there was something I was
13 forgetting.

14 **Q.** Do you have to watch what you eat because of your
15 diabetes?

01:32:57

16 **A.** Yes, sir.

17 **Q.** Does the diabetes cause any physical problems for you?

18 **A.** Yes, sir.

19 **Q.** Tell the judge what those are.

01:33:06

20 **A.** Well, the physical problems the diabetes cause me,
21 that's like my legs, the sores, the sores. It bring --
22 the welts and sores. A lot of problems.

23 **Q.** Does your diabetes cause any problems with your legs,
24 make it difficult for you to walk?

01:33:32

25 **A.** Yes, sir. Yes, sir. The swelling.

1 Q. Is it difficult for you to walk due to your obesity?

2 A. Yes, sir.

3 Q. Do the blood clots in your legs make it difficult for
4 you to walk?

01:33:46

5 A. Yes, sir.

6 Q. I see you have got a cane there with you. Do you use
7 a wheelchair at the Pack Unit?

8 A. No, sir.

9 Q. Do you use the cane at the Pack Unit?

01:33:57

10 A. Yes, sir.

11 Q. Have you asked for a wheelchair at the Pack Unit?

12 A. No, sir.

13 Q. Why not?

14 A. I don't want to be confined to a wheelchair if I can

01:34:07

15 stop it; but the way my leg is going and my diabetes, most
16 likely that's the way I'm heading.

17 THE COURT: I'm not clear what your problem is
18 with your leg. Do you have restless leg syndrome, is that
19 it?

01:34:20

20 THE WITNESS: Yes, sir.

21 THE COURT: Okay.

22 Q. (By Mr. Medlock) Do you have a condition called DVTs
23 in your leg?

24 A. Yes, sir.

01:34:27

25 THE COURT: Okay. I don't know what that is. So

1 if you could --

2 THE WITNESS: Blood clots.

3 Q. (By Mr. Medlock) Is that deep vein thrombosis?

4 THE COURT: Okay. I've got you. All right.

01:34:43

5 A. Yes, sir.

6 Q. (By Mr. Medlock) What if your blood pressure gets too
7 high? Does that happen occasionally?

8 A. Yes, sir. My -- I got -- my blood pressure is bad.

01:34:55

9 It generally stays up too high because I get hot, I get
10 hyped or you get aggravated or frustrated or if I'm moving
11 too fast because I'm obese. Everything.

12 Q. And what does that feel like, sir, when your blood
13 pressure is high?

01:35:11

14 A. Well, if your blood pressure is high, you can hear
15 your heartbeat in -- in your ears. It seems like you can
16 feel your heart beating, and it's hard to breathe.
17 It's -- just sweating. You are really uncomfortable.

18 Q. Did you feel that way just during the summer; or do
19 you feel that way other parts of the year, too?

01:35:29

20 A. Other parts of the year sometimes. Mostly the summer.

21 Q. Do you feel that way more often in the summer?

22 A. Yes, sir.

23 Q. Are there any other inmates of similar size to you at
24 the Pack Unit?

01:35:48

25 A. Yes. There is another one just as big as me.

1 Q. I want to show you a part of Plaintiffs' Exhibit 1 at
2 the -- which is a diagram of the Pack Unit. Do you see
3 that from where you are sitting, sir?

4 A. Yes, sir.

01:36:12 5 Q. I have put a "TP" on there. Is that the building that
6 you live in?

7 A. 6 building, B6, yes, sir.

8 Q. And is B6 one of the dormitories where the Power
9 Breezers were put in recently?

01:36:26 10 A. That's that new fan?

11 Q. That's the new big fan.

12 A. Yes, sir.

13 Q. Does that -- does the Power Breezer help any with the
14 temperature in the Pack Unit?

01:36:37 15 A. No, sir.

16 Q. Tell the judge what the effect of the Power Breezer
17 has, if any?

18 A. Well, Power Breezers up front if you are sitting right
19 up under it, you can feel it; but if you are sitting at
01:36:54 20 the table in the back or any one of the bunks, you can't
21 feel it.

22 Q. If you are sitting right under it, what do you feel?
23 What do you mean when you say you can feel it?

24 A. It have a -- it's cool. It blows more cooler than the
01:37:09 25 fans do.

1 Q. It blows a little cooler than the fans?

2 A. Yes, sir.

3 Q. Do you take any prescription medications, sir?

4 A. Yes, sir.

01:37:22

5 Q. About how many pills do you take every day, sir?

6 A. About 15.

7 Q. I'm going to show you a portion of Plaintiffs'
8 Exhibit 40. This is a portion of the policy on medical
9 conditions that may be affected in the heat.

01:37:49

10 Do you have cardiovascular disease, sir?

11 A. I don't know much of what is the medical term. What
12 is cardio?

13 Q. Do you have heart problems?

01:38:02

14 THE COURT: It's just generally a name for heart
15 problems.

16 THE WITNESS: No, sir. Not that I know of.

17 THE COURT: High blood pressure is a
18 cardiovascular problem.

19 THE WITNESS: Okay. I didn't know that.

01:38:10

20 Q. (By Mr. Medlock) You have high blood pressure?

21 A. Yes, sir, I have it.

22 Q. Okay. So you would have a cardiovascular problem
23 then.

24 A. Okay.

01:38:16

25 Q. Okay. Do you have diabetes?

1 **A.** Yes, sir.

2 **Q.** All right. And I want to show you the medications
3 that TDCJ and UTMB say are also affected in the heat. Do
4 you see the -- do you see that list there, sir, that's
5 another portion of the same exhibit?

01:38:43

6 **A.** Yes, sir.

7 **Q.** All right. The -- do you take any of those
8 medications on that list? Do you take a drug called
9 metoprolol?

01:38:54

10 **A.** Yes, sir.

11 **Q.** And that's M-e-t-o-p-r-o-l-o-l.

12 Do you take a drug called furosemide, sir?

13 THE COURT: Spell these for the court reporter,
14 if you would, please.

01:39:13

15 MR. MEDLOCK: F, as in Frank, u-r-o-s-e-m-i-d, as
16 in dog, -e.

17 THE WITNESS: That's the fluid pill, right?

18 MR. MEDLOCK: Right.

19 THE WITNESS: Yes, sir.

01:39:23

20 **Q.** (By Mr. Medlock) Tell the judge what it feels like on
21 a hot summer day in the Pack Unit in your dormitory.

22 **A.** On a hot summer day when it's 90 or better on my dorm,
23 it feels real misery. You just sweating. You just sweat.
24 You're real sticky. You are real -- me, because I'm obese
25 and the heat do me real bad, it's undescribable. It's

01:39:47

1 real misery.

2 **Q.** How do you particularly feel it because of your
3 obesity?

4 **A.** How do I particularly feel it? What do you mean?

01:40:04

5 **Q.** Yeah. What does it feel like in your body?

6 **A.** I mean, I be sitting there like -- like, Lord, please
7 let it cool off or something. I be -- that's just misery.
8 Just -- just sit in the bunk and put your head underneath.
9 Just sit there and just looking, soaking wet, clothes

01:40:22

10 stuck to me.

11 **Q.** Do you sweat a lot?

12 **A.** Yes, sir. Yes, sir. Real bad.

13 **Q.** Do you sweat all day?

14 **A.** Yes, sir.

01:40:29

15 **Q.** What does your bunk feel like when you are laying on
16 it?

17 **A.** Well, every -- everything be wet.

18 **Q.** Does your bunk become warm?

19 **A.** Yes, sir. The metal parts of the bunk gets real, real
20 hot.

01:40:46

21 **Q.** Describe that for the Court.

22 **A.** It's like touching a stove or an oven or something
23 when there is something in there. It will just be real
24 hot.

01:40:58

25 **Q.** What do you wear when you're sitting in your bunk on

1 those hot days?

2 **A.** Underwear and T-shirt.

3 **Q.** Okay. Your clothes stick to you?

4 **A.** Yes, sir.

01:41:09 5 **Q.** Does your whole bed get wet with sweat?

6 **A.** Yes, sir.

7 **Q.** When does it start to cool off at the Pack Unit? Like
8 what time of day?

9 **A.** Kind of 7:30 or 8:00. But it just cooled off. When
01:41:25 10 it really get cool is about 1:00 or 2:00 in the morning.

11 **Q.** Okay. Is that -- around what time does it start to
12 get cool enough that you can sleep?

13 **A.** That's around 1:00 or 2:00 in the morning when you can
14 really get to rest right.

01:41:39 15 **Q.** And what time do you have to wake up at the Pack Unit?

16 **A.** They run -- I shoot the insulin. We have to get up
17 around 3:30 or 4:00.

18 **Q.** Do you drink a lot of water in the summertime?

19 **A.** Yes, sir.

01:41:54 20 **Q.** How much water do you drink in the summer?

21 **A.** I drink it all day. I couldn't judge how much it is.
22 I drink all day. Bottle behind bottle.

23 **Q.** Are you able to get your water yourself to drink?

24 **A.** No. Most of the people help. Somebody will walk and
01:42:11 25 get it for me and help me out. If not, I walk up there

1 and get it myself.

2 **Q.** When you say somebody helps you to get it,
3 what -- who? Like, who helps you to get it?

4 **A.** A friend or another offender.

01:42:24 5 **Q.** Usually another prisoner?

6 **A.** Yes, sir.

7 **Q.** What do you do personally to kind of cope with the
8 heat?

9 **A.** Sit -- sit still, not much moving.

01:42:37 10 **Q.** What do you see other inmates do to cope with the
11 heat?

12 **A.** Basically, the same thing. Some lay on their floor,
13 wet their floor, lay down on the floor, wet theirselves, wet
14 their T-shirts and put them back on, just get
01:42:54 15 under -- under the fan as much as they can.

16 **Q.** Have you ever lived anywhere as hot as the Pack Unit?

17 **A.** I have been on about eight or nine ranches now, and
18 they are all just as hot.

19 **Q.** Eight or nine TDCJ prisons?

01:43:15 20 **A.** Yes.

21 **Q.** Other than the TDCJ prisons you have been in, have you
22 ever lived in any other location without air-conditioning?

23 **A.** No, sir.

24 THE COURT: Do you go to the respite areas often
01:43:25 25 during the day?

1 THE WITNESS: Yes, sir. This year I have been
2 going.

3 THE COURT: Has anybody ever told you you can't
4 go?

01:43:32 5 THE WITNESS: No, sir.

6 Q. (By Mr. Medlock) Mr. Pennington, why don't you tell
7 the judge about your experiences trying to use the respite
8 areas.

9 A. Well, what makes me -- what makes you really don't
01:43:56 10 want to go is when you get -- you go down there. I can't
11 stand there. They have got one spot they want you to go
12 stand up. I can't stand up long. Then if you -- like if
13 you go in the barbershop, they let you stay in there a few
14 minutes; and they are going to run you out of there, tell
01:44:11 15 you to go to the infirmary. You go down to the infirmary.
16 Then they let you stay in there 15 or 20 minutes, maybe
17 30 minutes. They tell you to go to the schoolhouse. Then
18 when you get to the schoolhouse, and they tell you to go
19 back to the desk. They are going to send somebody else in
01:44:25 20 there. So I just give up and go on to the house.

21 Q. Has that been your experience this year --

22 A. Yes, sir.

23 Q. -- about using respite areas?

24 A. Yes, sir.

01:44:33 25 Q. Was that your experience last year in 2016 using the

1 respite areas?

2 **A.** No, sir. It was a little worser last year.

3 **Q.** Why was it worse last year?

4 **A.** Because some of them like -- there's certain officers

01:44:52

5 -- it's not all the officers, you know. Certain officers

6 just don't care whether you are hot or not. They just

7 don't care.

8 **Q.** Is it difficult for you because of your physical

9 condition to move between the respite areas?

01:45:03

10 **A.** Yes, sir.

11 **Q.** You mentioned that you -- you were told to stand in a

12 hallway. Is this a photo of the hallway you were told to

13 stand in?

14 **A.** Yes, sir.

01:45:20

15 **Q.** Were you using your cane the day that you were told to

16 stand in the hallway?

17 **A.** Yes, sir.

18 **Q.** Have you ever been told you are not allowed to talk in

19 the respite area?

01:45:31

20 **A.** Yes, sir.

21 **Q.** Have you been told you are not allowed to bring a book

22 to the respite area?

23 **A.** Yes, sir.

24 **Q.** If -- do you go to the chow hall to eat meals?

01:45:41

25 **A.** Yes, sir. But in the evening time, like it

1 be some -- a lot of times it be too hot, and I choose not
2 to go in there. It's -- it's too hot. Because I sweat
3 super bad.

4 **Q.** Do you skip the meals on those days it's super hot?

01:45:54

5 **A.** Yes, sir.

6 **Q.** If you were told by a TDCJ officer that everyone in
7 your dorm is going to go to a respite area and you'll stay
8 there for two to three hours, would you go?

9 **A.** Yes, sir.

01:46:12

10 **Q.** Has anyone at TDCJ ever told you what the indoor
11 temperature was at the Pack Unit?

12 **A.** Yes, sir. I have asked. If I see Mr. Cantu or
13 somebody come in they -- they got a little thing they
14 shoot up at the ceiling.

01:46:26

15 I say, "How hot is it?"

16 I think one day it was 114 or something in there.

17 **Q.** That's what Mr. Cantu told you?

18 **A.** Yes.

01:46:39

19 **Q.** Do you see correctional officers having trouble with
20 the heat in the summer?

21 **A.** Yes, sir.

22 **Q.** What do -- tell the judge how you can tell that
23 officers are having trouble with the heat.

01:46:50

24 **A.** When -- well, a lot of them will verbally say it and
25 they be sweating and they be trying to get under the fans.

1 I have put my fan on some of them. They -- they are just
2 like us, human. It's hot. It's hot.

3 **Q.** Before you came to TDCJ, did you spend any time in a
4 county jail?

01:47:07

5 **A.** Yes, sir.

6 **Q.** Were you in that county jail during the summer?

7 **A.** Yes, sir.

8 **Q.** Was that county jail air-conditioned?

9 **A.** Yes, sir.

01:47:16

10 **Q.** Tell the judge about your experience with the
11 air-conditioning at the Harris County jail.

12 **A.** Well, you slept good. You don't even know you are on
13 the -- you don't even know what time of year it is on the
14 outside. It could be 100 and something degrees out there,
15 but you wouldn't know it on the inside because it's cool
16 all the time.

01:47:33

17 **Q.** And what was the -- the last year that you were in the
18 Harris County jail in the summer?

19 **A.** I think '89.

01:47:49

20 **Q.** Have you ever been told by someone in the medical
21 department at the Pack Unit that you experienced a
22 heat-related injury like heat exhaustion, heatstroke?

23 **A.** Yes, sir. They have -- I have -- they had -- they
24 call it a -- they have got something they call the ICS.

01:48:04

25 They had to call it on me. I wasn't feeling good one day.

1 I was feeling bad. I was sweating. I was feeling like I
2 wanted to throw up. I didn't know what was wrong with me.

3 So they come got me on a stretcher and took me to the
4 infirmary, and they told me that it was just the heat.

01:48:20 5 Because after I was in the infirmary also while every --

6 THE COURT: What was the abbreviation you used?
7 ICS?

8 THE WITNESS: Yes, sir.

9 THE COURT: What does that mean?

01:48:31 10 THE WITNESS: All I know is a medical response.

11 TDCJ GUARD: Incident command system.

12 THE COURT: I'm sorry?

13 TDCJ GUARD: Incident command system.

14 THE COURT: Incident command system.

01:48:39 15 **Q.** (By Mr. Medlock) In your experience, Mr. Pennington,
16 when an ICS is called, what does that mean?

17 **A.** When ICS, something serious is happening because all
18 movement and everything stop. All the officers focus on
19 that ICS. They are going to get you where you need to be
01:48:53 20 right away.

21 **Q.** Kind of like it's an emergency?

22 **A.** Like it -- it is an emergency.

23 **Q.** When -- when the ICS was called for you, that was
24 during the summer?

01:49:03 25 **A.** Yes, sir.

1 Q. About how long ago was that?

2 A. That was about three years ago.

3 Q. About what time of day was it?

4 A. About 2:00-something. I'm guessing at the time. I
01:49:16 5 don't remember exactly the time.

6 Q. Fair enough. What had you been doing before that
7 happened?

8 A. Just sitting in the bunk.

9 Q. Had you been drinking water that day?

01:49:28 10 A. Yes, sir.

11 Q. Had you been sitting in front of the fan?

12 A. I guess I wasn't drinking enough water because they
13 told me I was, like, dehydrated. The nurse told me to
14 drink more water that day.

01:49:37 15 Q. Had you been drinking about the normal amount that you
16 drink during the summer?

17 A. Yes, sir.

18 Q. What did you first start to feel like before the
19 medical staff was called to help you?

01:49:49 20 A. Well, I'm trying to -- I'm trying to describe it.
21 It's just -- it's just a funny feeling. You just go. All
22 of a sudden you are sweating, and it seems like you can't
23 hardly breathe no more.

24 I was like, gawd dog. I told my friend, I said, man,
01:50:07 25 call medical for me. I -- I need them. I didn't know

1 what was wrong with me. I thought I was going to have a
2 heart attack or something.

3 **Q.** Did you feel dizzy?

4 **A.** Yes, sir.

01:50:16 5 **Q.** Did you have a headache?

6 **A.** Not so much a headache but my chest and stuff, my
7 breathing. And I was real dizzy like --

8 **Q.** Have you ever --

9 **A.** -- I wanted to faint or something.

01:50:36 10 **Q.** Have you ever felt that way any other time of the
11 year?

12 **A.** Yes. Well, about two weeks ago or three weeks ago,
13 the same thing. It -- it hit me when I come out of the
14 chow hall. I was just sweating. Because I was sitting on
01:50:50 15 the bench, and it seems like my legs wanted to give out
16 from under me.

17 I asked the nurse. I was right there in front of the
18 infirmary. And she said it was just the heat. I come
19 in -- I went in and sat down a little while and drank some
01:51:03 20 water, and it all went away.

21 **Q.** You said you were just leaving the chow hall when that
22 happened most recently?

23 **A.** Yes, sir.

24 **Q.** Had you been drinking water before that happened,
01:51:12 25 earlier that day?

1 **A.** Yes, sir.

2 **Q.** Had you drank any water when you were in the chow
3 hall?

4 **A.** Yes, sir.

01:51:19 5 **Q.** Were you using your fan earlier that day?

6 **A.** Yes, sir.

7 **Q.** Were you sitting in front of the fan in the chow hall?

8 **A.** I don't -- well, we got four of them in there. I
9 don't -- I don't know if I was by one of them or not.

01:51:34 10 **Q.** When did someone at TDCJ first tell you about the
11 existence of the respite areas at the Pack Unit?

12 **A.** Someone from TDCJ?

13 **Q.** Yeah.

14 **A.** No one from TDCJ ever told me about the
01:51:55 15 respite -- about it.

16 **Q.** How did you learn that the respite areas exist?

17 **A.** Through other -- other inmates.

18 **Q.** Do the fans help you with the heat in your dorm?

19 **A.** No, sir. But better than nothing.

01:52:18 20 **Q.** What do the fans feel like to you?

21 **A.** When -- in the heat part of the day after -- after
22 1:00, hot air. You might as well just -- you can cut it
23 off that time of day.

24 **THE COURT:** The fans are cut off at 1:00 p.m.?

01:52:34 25 **THE WITNESS:** I said you can cut them off. I

1 said they are just blowing hot air. There ain't -- ain't
2 no cold air coming out of them.

3 **Q.** (By Mr. Medlock) You say you might as well cut them
4 off for all the good they are doing for you?

01:52:45 5 **A.** Yes, sir. Yes, sir. That's what I was trying to say.

6 **Q.** Now, there is no showers in your dorm, right?

7 **A.** No, sir.

8 **Q.** Have you ever used a cool-down shower?

9 **A.** Yes, sir.

01:52:54 10 **Q.** What -- does the cool-down shower help with the heat?

11 **A.** At the time when you -- when you go in and get in it,
12 it feels so good; and it makes your body temperature to
13 come all the way down. But by the time you dry off and
14 walk back to your dorm, you are right back where you were.

01:53:11 15 **Q.** How often do you use the cool-down showers?

16 **A.** I've use it every day. Because we go in there -- when
17 they call it at night, I go in there every -- I like to
18 cool down for a little while before I go off. Especially
19 when it's getting later in the evening, I stay cooler.

01:53:24 20 **Q.** Has anyone ever told you at TDCJ that you can take a
21 cool-down shower whenever you want?

22 **A.** No, sir.

23 **Q.** Now, do the -- do the windows open in your dorm?

24 **A.** Yes, sir.

01:53:35 25 **Q.** Does opening the windows help with the heat?

1 **A.** No. When it's hot, it's hot air is coming in the
2 window. It will feel more better if you close the window.
3 You could feel your fan if you close the window.

01:53:54

4 **Q.** Do the -- do insects come in through the windows when
5 they are open?

6 **A.** Oh, they got all kind of little bugs come in. Little,
7 little gnats. They just -- I mean, they all over you, all
8 over you. You can't eat or nothing.

9 **Q.** Do the -- do the insects bite you?

01:54:03

10 **A.** Yes, sir.

11 **Q.** What does that feel like?

12 **A.** Well, they are some little worrisome things. They be
13 all just biting you all the time. I don't -- I don't know
14 exactly how to answer what you are saying. Like,

01:54:17

15 mosquitoes or something that's constantly biting you.

16 **Q.** Does it hurt when they are biting you?

17 **A.** Yes, sir.

18 **Q.** Do officers at the Pack Unit do wellness checks during
19 the summer?

01:54:27

20 **A.** What you mean by that?

21 **Q.** Do you know what a wellness check is, sir?

22 **A.** No, sir.

23 **Q.** Do you know if you are on a wellness checklist?

24 **A.** I don't know.

01:54:34

25 **THE COURT:** Why don't you tell him what it is.

1 Maybe he doesn't --

2 **Q.** (By Mr. Medlock) Do officers come by and check on
3 your welfare during the summer any differently than they
4 would during the rest of the year?

01:54:44

5 **A.** Well, they -- on the Pack they check on all of us.
6 Whether if you are asleep, they are going to wake you up
7 to make sure that you are living. They do that
8 constantly.

01:54:55

9 **Q.** Have you ever been told that they are doing a wellness
10 check for you?

11 **A.** No, sir.

12 **Q.** Sir, I -- I just want to ask you: Why did you
13 volunteer to come here and testify today?

01:55:10

14 **A.** Well, the reason I -- to speak the truth about the
15 air-conditioning, the heat, that maybe we can get the
16 respite area fixed better. That's what I told my fellow
17 inmates. I said, Maybe we can get the respite area fixed
18 better.

01:55:26

19 **Q.** What would it take to make the respite area fixed
20 better?

01:55:43

21 **A.** Well, if everybody -- if we can get a list up to know
22 that you can go, maybe we could read books or something in
23 the library. You know you can go and sit down and ain't
24 nobody just -- you know, if they are letting you go and
25 they are saying you can go, you'll get more people be

1 willing to go. Other than that, a lot of people don't
2 know it.

3 **Q.** And is that your experience now, that there are just a
4 lot of people that just don't know they can go?

01:55:54

5 **A.** Yes, sir.

6 MR. MEDLOCK: Pass the witness, Your Honor.

7 THE COURT: Okay. Cross?

8 MR. WARNER: Thank you, Your Honor.

9 **CROSS-EXAMINATION**

01:56:07

10 BY MR. WARNER:

11 **Q.** Good afternoon, sir.

12 **A.** Yes, sir

13 **Q.** So it feels hot in the prison during the summer?

14 **A.** Yes, sir.

01:56:28

15 **Q.** And you sweat most of the day, correct?

16 **A.** Yes, sir.

17 **Q.** And you get sticky?

18 **A.** Yes, sir.

19 **Q.** And all of that is uncomfortable?

01:56:43

20 **A.** Yes, sir.

21 **Q.** All right. But you have never been told that you
22 can't go to respite, right?

23 **A.** That you cannot go?

24 **Q.** Right.

01:56:48

25 **A.** No, sir.

1 Q. And you have never been diagnosed by a physician with
2 a heat illness, right?

3 A. Heat illness, no, sir, not that I know of.

01:57:03

4 Q. All right. You spoke for a while about your
5 experiences -- your experiences with respite; and I would
6 like to ask you a little bit more about that. Okay?

7 A. Yes, sir.

8 Q. It sounds like sometimes they have to move you around
9 from one respite area to another; is that right?

01:57:19

10 A. Yes, sir.

11 Q. Okay. And that can be inconvenient; is that fair?

12 A. Inconvenient?

13 Q. Inconvenient to have to move from one place to
14 another.

01:57:32

15 A. Yes, sir.

16 Q. Okay. Maybe it can be difficult to move from one
17 place to another?

18 A. Yes, sir.

19 Q. All right. But both areas are air-conditioned, right?

01:57:40

20 A. Yes, sir.

21 Q. The respite area that you leave is air-conditioned?

22 A. Yes, sir.

23 Q. And the respite area that they move you to is
24 air-conditioned?

01:57:48

25 A. Yes, sir.

1 Q. All right. And moving from one area to the other then
2 doesn't prevent you from cooling down, right?

3 A. No, sir.

01:58:04

4 Q. Okay. Now, you spoke about one respite area where you
5 have had to stand up. Do you remember that?

6 A. Yes, sir.

7 Q. Okay. That's lower admin, right? Is that the lower
8 admin hallway?

9 A. Yes, sir.

01:58:12

10 Q. Okay. When you are in the lower admin hallway, there
11 are occasions where you have to stand up no matter what
12 the temperature is, right?

13 A. Yes, sir.

14 Q. And that's because of administrative segregation
15 that's back there?

01:58:29

16 A. Yes, sir.

17 Q. So there are prisoners back there who are kept there
18 for their own protection for some period of time, right?

19 A. Yes, sir.

01:58:37

20 Q. And when they move those prisoners, they make the
21 other prisoners, who happen to be in the lower admin
22 hallway, stand and face the wall, right?

23 A. No. You have got to clear that area.

24 Q. Clear the area. Okay. And that's to protect --

01:58:52

25 A. Well, they --

1 Q. That's to protect those prisoners, right?

2 A. Yes, sir.

3 Q. Okay. As long as you don't have to stand and face the
4 wall, is respite helpful for you in bringing and cooling
5 you down?

01:59:23

6 A. Yes, sir.

7 Q. All right. It sounds like you think that maybe some
8 inmates don't know that they can access respite whenever
9 they want; is that right?

01:59:48

10 A. Yes, sir.

11 Q. Is it your understanding that you can access respite
12 whenever you want?

13 A. Ask -- ask for it?

14 Q. If you ask for it.

01:59:58

15 A. Yes, sir.

16 Q. All right. So perhaps there should be some more
17 instruction on that point to other prisoners?

18 A. Yes, sir.

19 Q. All right. But you don't have any doubt, sitting here
20 today, that if you need to go to a respite area tomorrow,
21 you are going to be allowed to do so, right?

02:00:20

22 A. Yes, sir.

23 Q. Okay. Great. And that allows you to cool down when
24 you feel like you need to cool down?

02:00:36

25 A. Yes, sir.

1 Q. All right. You told us a little bit about your sleep
2 schedule --

3 A. Yes, sir.

4 Q. -- and some of the challenges you have had
5 with -- with sleep. You go to sleep at what time at
6 night?

7 A. Well, mainly, I lay down around 9:30 or 10:00.

8 Q. In the evening?

9 A. I tries, yes, sir.

10 Q. Okay. But it's about 1:00 or 2:00 a.m. before it gets
11 really cool; is that right?

12 A. Yes, sir.

13 Q. And you have to get up three or four hours after that;
14 is that fair?

15 A. Yes, sir.

16 Q. Okay. But it stays cool for a while after you get up,
17 right?

18 A. Yes, sir.

19 Q. Okay. Until about what time in the day? 8:00 or
20 9:00? Is that before it starts to warm up?

21 A. It's started getting warm. It don't really get warm
22 until around 12:00 or 1:00.

23 Q. Okay. So there is a long period of time there in the
24 morning between about midnight, 1:00 a.m. and noon --

25 A. Yes, sir.

1 Q. -- where it's not really that hot inside?

2 A. No. It's not that hot then.

3 Q. During that time period?

4 A. Yes.

02:01:44 5 Q. Okay. Have you ever asked whether you could have a
6 different sleep schedule because of your condition?

7 A. What do you mean?

8 Q. Have you ever asked if you could sleep more during the
9 cold hours and less during the warm hours?

02:02:03 10 A. Asked?

11 Q. Have you asked?

12 A. No. If you want to sleep, that's up to you.

13 Q. Okay. So do I understand you correctly that there is
14 no schedule that you have to keep that prevents you from
02:02:14 15 sleeping during the cool hours?

16 A. No, sir.

17 Q. Okay. I think maybe my form of question was
18 confusing. I -- let me ask it again. Is it correct that
19 there is nothing preventing you from sleeping during the
02:02:31 20 cool hours? Is that --

21 A. There is nothing to stop you.

22 Q. That is true?

23 A. Yes, sir.

24 Q. Okay. So if you wish to sleep between 1:00 a.m. and
02:02:40 25 9:00 a.m., you can do that?

1 **A.** Yes, sir.

2 **Q.** Have you done that?

3 **A.** Sleep through -- no, sir.

4 **Q.** No. But that's something that you could choose to do?

02:02:51 5 **A.** I could choose to do it.

6 **Q.** All right. And that would be easier for you to sleep,
7 right?

8 **A.** Yes.

9 **Q.** Because it's cooler?

02:02:57 10 **A.** Yes, sir.

11 **Q.** Okay. Do you recall an incident about three years ago
12 where you got hot? Do you remember that?

13 **A.** Yes, sir.

14 **Q.** Okay. Are you able to recall the timing of that
02:03:20 15 incident with any more specificity, what month it was?

16 **A.** No, sir.

17 **Q.** No?

18 **A.** No, sir.

19 **Q.** Do you think it was during the summer, but you are not
02:03:29 20 sure?

21 **A.** I think it was during the summer. It was hot. It was
22 hot.

23 **Q.** It was hot. Okay. So -- and then ICU was called?

24 **A.** ICS.

02:03:40 25 **Q.** ICS. Thank you. Were you treated for -- by someone

1 at the infirmary?

2 **A.** Yes, sir.

3 **Q.** Okay. And who was that?

4 **A.** When I went in -- let me see. What nurse is that?

02:03:56

5 You have -- whenever you call the ICS, you have to see,
6 how they say, a provider. In other words, a doctor or a
7 PA or something.

8 **Q.** Okay.

9 **A.** You have to see one of them whenever they run ICS.

02:04:05

10 **Q.** All right.

11 **A.** And I don't remember which one that seen me that time
12 that many years ago, but I had seen one of them in there.

13 **Q.** Okay. All right. And they told you to drink more
14 water?

02:04:19

15 **A.** Yes, sir.

16 **Q.** Okay.

17 **A.** They let me cool off, drink some more water.

18 **Q.** Okay. And I guess you said that you -- you rested a
19 little bit, and you felt okay?

02:04:27

20 **A.** Yes, sir.

21 **Q.** All right. Did you rest in the infirmary?

22 **A.** Yes, sir.

23 **Q.** And that was in an air-conditioned space?

24 **A.** Yes, sir.

02:04:33

25 **Q.** And after 20 minutes or so, you felt pretty okay?

1 **A.** Yes, sir.

2 **Q.** And you were able to move on with your day?

3 **A.** Yes, sir.

4 **Q.** Didn't go any further than that?

02:04:40 5 **A.** (Shaking head side to side.)

6 **Q.** Okay. You mentioned a lot of medications earlier that
7 you take, right?

8 **A.** Yes, sir.

9 **Q.** Do you know whether any of those medications can cause
02:04:54 10 dizziness or similar symptoms?

11 **A.** No, sir. The high blood pressure medicine, mostly all
12 of it can if you get hyped or, you know, you are on it.
13 All of it.

14 **Q.** Do you take -- do you recall whether you took all your
02:05:12 15 medicines in a timely fashion on that day, three years
16 ago?

17 **A.** I takes all my meds every day.

18 **Q.** You are pretty regular about it?

19 **A.** Yes, sir. I'm real regular with that, sir.

02:05:23 20 **Q.** Okay. And you talked about an incident about three
21 weeks ago that was similar?

22 **A.** Yes, sir.

23 **Q.** And it was similar in the sense that you felt a little
24 overheated; is that right?

02:05:32 25 **A.** Yes.

1 Q. Have I described the incident accurately; is that
2 fair? You felt a little overheated?

3 A. Yes, sir.

4 Q. Okay. And you told somebody?

02:05:39

5 A. Yes, sir.

6 Q. Who did you tell?

7 A. We have a nurse. I don't -- she is from the agency.
8 I don't know her name. I ain't good at names.

9 Q. Okay.

02:05:52

10 A. But she seen me. I don't know her name.

11 Q. It was a nurse?

12 A. Yes, sir.

13 Q. And you sat down in the infirmary?

14 A. Yes, sir.

02:05:59

15 Q. For, I think you said, again about 10 or 20 minutes,
16 is that maybe --

17 A. Maybe a little longer.

18 Q. A little longer? A half an hour?

19 A. Yes, sir, about. I'll go with that.

02:06:07

20 Q. And you drank some water?

21 A. Plenty of cool water.

22 Q. And it went away, and you felt okay?

23 A. Yes, sir.

24 Q. And you went on with your day?

02:06:14

25 A. Went on with my day.

1 Q. So this is another incident where the respite worked?

2 A. Yes, sir.

3 Q. Okay. You talked a little bit about cool-down
4 showers, and I -- I think you said that you take one every
5 day?

6 A. Every day.

7 Q. Is that right? Okay. What time of day do you do that
8 again?

9 A. After 6:00.

10 Q. Is that to help you cool down for the evening?

11 A. Yes, sir.

12 Q. And you think it's effective at doing that?

13 A. During that time, yes, sir, for me because I'm a big
14 dude. And when I cool down -- when I go in there to cool
15 my body down, I'm through for the day.

16 Q. Okay. I think you expressed some questions
17 about -- about whether you can really take another one
18 whenever you want; is that right? You are not sure that
19 you can actually access that cold shower any time of day
20 that you want to?

21 A. I didn't know that you can.

22 Q. Okay.

23 A. I never asked.

24 Q. Well, let me ask you this: If -- if going forward it
25 was made clear to you that you could ask for a cool-down

1 shower any time you want and get it and stay in it as long
2 as you need, would you take advantage of that?

3 **A.** Yes, sir.

4 **Q.** You might take another cool-down shower during the
5 day?

6 **A.** Yes, sir.

7 **Q.** And that would help bring -- that would help cool you
8 off again?

9 **A.** It would help cool off, yeah.

10 **Q.** All right.

11 MR. WARNER: I'm sorry, Your Honor. If I could
12 have one moment.

13 THE COURT: That's fine.

14 **Q.** (By Mr. Warner) Just one more question. You talked a
15 little bit about what the officers do when they come in
16 to -- to look in on you, those wellness checks; is that
17 right?

18 **A.** Yes, sir.

19 **Q.** Okay. So you are obviously not responsible for
20 actually conducting those wellness checks, right? The
21 officers do that?

22 **A.** They do that, the officers.

23 **Q.** All right. And you don't know, do you, what exactly
24 they are looking for when they do the wellness checks?

25 **A.** Yes, I know.

1 Q. What do you think that they are looking for?

2 A. No. What I know they are looking for. They come in
3 and wake you up. A lot of people get aggravated because
4 they wake you up when you're sleeping.

02:08:45

5 They said, "What? What?"

6 "I'm just making sure you ain't dead in here. I'm
7 just making sure you are all right."

8 Q. Okay. Some of -- some of the inmates don't like that?

02:08:58

9 A. No. Everybody don't like that getting woke up. But
10 they do it constantly, all night and all day.

11 Q. Do they do it too much? Do they -- do they wake you
12 up too much, from your point of view?

13 A. No. No. Because we are on a medical unit. And you
14 find a lot them being laying there dead if nobody don't
15 check. Ain't no telling how long they could be there. So
16 I think it's good that they checks on them --

02:09:14

17 Q. All right.

18 A. -- wakes them up.

19 Q. But it's been your experience they check -- they check
20 on everybody during this wellness -- wellness check,
21 right?

02:09:22

22 A. If that's what you call it, a wellness check, yes,
23 sir.

24 Q. When they look in on people?

02:09:29

25 A. Yes, sir.

1 Q. All right. Thank you.

2 A. You are welcome.

3 MR. WARNER: Pass the witness. Thank you.

4 THE COURT: Thank you. Any redirect?

02:09:36 5 MR. MEDLOCK: Just a little bit of redirect, Your
6 Honor.

7 **REDIRECT EXAMINATION**

8 BY MR. MEDLOCK:

02:09:44 9 Q. Mr. Pennington, the -- the time when the ICS was
10 called, did a -- did the provider, the doctor or the PA
11 that you saw, did they tell you that you had an episode
12 with the heat?

13 A. Yes, sir.

14 Q. Did they tell you you had heat exhaustion?

02:09:55 15 A. Yes, sir.

16 Q. You talked about how it's cooler in the Pack Unit in
17 the morning, kind of until about noon. Do you remember
18 that?

19 A. Yes, sir.

02:10:09 20 Q. What do you mean by that it's cooler in the morning?
21 Is it actually comfortable or is it hot or what does that
22 mean?

23 A. It's tolerable. You know, I mean, you ain't sweating.
24 You are just -- no, you just -- it's all right.

02:10:35 25 Q. How long do you feel that you have cooled off after

1 you take a cool-down shower?

2 **A.** How long you feel you are cooled off?

3 **Q.** Yeah.

4 **A.** When you get cooled down with the cold water, it
02:10:49 5 chills your whole body down. You feel so good. After you
6 get out of it, by the time you walk down the hall, you are
7 sweating and right back -- you are right back hot.

8 **Q.** By the time you get back to your dorm, it's just like
9 it never happened?

02:11:04 10 **A.** Yes, sir. Just like it never happened.

11 **Q.** When you -- that time a few weeks ago, when you went
12 to the infirmary and you sat there and you had the water
13 and you felt better, by the time you got to the infirmary,
14 did you feel unwell? Did you feel sick by the time you
02:11:31 15 actually got there?

16 **A.** Yes. Yes, sir. I had to sit down in the front of the
17 infirmary before I go -- I wasn't able to walk right there
18 then. I thought I was going to pass out.

19 **Q.** You felt like you were going to pass out before you
02:11:43 20 got to the infirmary?

21 **A.** Yes, sir.

22 **Q.** All right. If you were to sleep through chow in the
23 morning, would you have to skip your meal that morning?

24 **A.** What do you mean? Would I have to skip the meal?

02:12:07 25 **Q.** Yeah. If you sleep through it, would you have an

1 opportunity to go to chow any other time that morning?

2 **A.** No.

3 **Q.** You would have to skip the meal then?

4 **A.** Yes.

02:12:14

5 MR. MEDLOCK: All right. Pass the witness, Your
6 Honor.

7 THE COURT: Okay. Thank you. You may be
8 excused. Thank you very much.

02:12:29

9 Gentlemen and Ms. O'Leary, I think we are getting a
10 little cumulative now, aren't we? I don't know how much
11 more testimony like this we need.

12 MR. EDWARDS: Okay.

02:12:39

13 THE COURT: Well, I don't know. Tell me what you
14 are thinking. How many more do we have on these general
15 subjects?

16 MR. MEDLOCK: Well, we have several more inmates,
17 Your Honor. I expect that to some extent -- we recognize
18 that some of this is cumulative, but I think that it's
19 important because the -- if we have testimony from the
20 other side that these programs exist --

02:12:53

21 THE COURT: Okay. Well, I don't want to tell you
22 how to run your case, but I just -- I'm assuming that
23 conditions that are applicable to one inmate would likely
24 be applicable to another.

02:13:10

25 MR. MEDLOCK: And I think that as long as that is

1 this Court's understanding --

2 THE COURT: What does the defense say about this?

3 MR. McCARTY: Your Honor, we do believe it's
4 cumulative. Certainly if they want to bring in -- I think
02:13:23 5 we have another seven scheduled. If they want to bring in
6 another seven, you have limited the time, obviously. And
7 so, you know, we don't think -- we don't think there is
8 going to be much new presented here. But it's their case,
9 Your Honor. So we are not going to --

02:13:41 10 MR. EDWARDS: Your Honor, I think a possible
11 solution for this would be for us to meet with one client
12 now, talk amongst ourselves for five to ten minutes.

13 THE COURT: Okay. All right.

14 MR. EDWARDS: If we could have the possibility of
02:13:51 15 calling people in a rebuttal portion of the case to the
16 extent it's necessary.

17 THE COURT: Talk with the other side about that.
18 That's not a bad way to start. Okay. 15-minute recess,
19 please.

02:14:02 20 (Recess from 2:14 p.m. to 2:34 p.m.)

21 THE COURT: Okay. Are we ready for another
22 witness?

23 MR. MEDLOCK: Yes, Your Honor. We have managed
24 to streamline some things for you. Right now we would
02:34:10 25 like to call Carlos Huerta.

1 MR. WARNER: If I could interject just briefly to
2 document our conversations earlier for the Court.

3 THE COURT: Yeah.

02:34:22

4 MR. WARNER: I think what we have agreed is that
5 if the plaintiffs want to call some of the inmate
6 witnesses in rebuttal, that's fine; insofar as defendants
7 are able to call people in surrebuttal, if necessary.

8 THE COURT: Is that agreeable?

9 MR. MEDLOCK: Yes, Your Honor.

02:34:36

10 THE COURT: Okay. Good deal.

11 MR. WARNER: With time reserved.

12 THE COURT: Congratulations on your consensus.

13 Okay.

14 Mr. Huerta, is he in the courtroom?

02:35:03

15 MR. EDWARDS: He is coming.

16 THE COURT: Yes, sir. We're going to have you in
17 this seat right here. Before you take your seat, I'm
18 going to have you take the oath. You don't have to raise
19 your hands. If you can answer affirmatively, please say

02:35:12

20 "I do."

21 (Witness sworn by the case manager.)

22 THE WITNESS: I do.

23 THE COURT: Have a seat.

24 **CARLOS HUERTA,**

02:35:15

25 having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MEDLOCK:

Q. Good afternoon, sir. Can you hear me all right?

A. Yes, sir.

Q. Can you state your name?

A. Carlos Huerta.

Q. How old are you?

A. 30.

Q. Where are you from originally, sir?

A. San Antonio, Texas.

Q. What did you do for a living before you went to the Texas Department of Criminal Justice?

A. I worked at a convenience store, at HEB.

Q. At HEB the grocery chain?

A. Yes, sir.

Q. How long have you been in TDCJ custody now?

A. Three and a half years.

Q. And how long is your total sentence?

A. Eight years.

Q. Are you eligible for parole?

A. Correct.

Q. How long have you lived at the Pack Unit?

A. Going on two years.

Q. And how tall are you, sir?

A. About 5'5".

1 Q. And about how much do you weigh?

2 A. 238.

3 Q. Have you ever been told that you are overweight?

4 A. Yes.

02:36:16 5 Q. Doctors have told you that?

6 A. Yes.

7 Q. Sir, do you have any chronic medical conditions?

8 A. Yes.

9 Q. Do you have diabetes?

02:36:28 10 A. Yes.

11 Q. Do you have cardiovascular conditions, problems with
12 your heart or high blood pressure?

13 A. Yes. Correct.

14 Q. Do you take any medications?

02:36:37 15 A. Yes.

16 Q. Do you know what medications you take?

17 A. One of them is ibuprofen, and the other one is
18 atenolol.

02:37:08 19 Q. Is that atenolol, a-t-e-n-o-l-o-l? Is that the
20 medication that you take, sir?

21 A. Yes.

22 Q. Okay. Sir, I want you to just tell Judge Ellison what
23 the heat feels like inside your dormitory at the Pack
24 Unit.

02:37:22 25 A. The heat where I'm at in E dorm on the -- on the days

1 it gets hot is like when you are -- when you are at work
2 on, like, an eight-hour shift and you get in the hot car
3 to start your vehicle, that's how it gets hot in the dorm.

02:37:40

4 **Q.** On those days in your dorm, do you feel any physical
5 symptoms?

6 **A.** You start getting frustration and dizziness.

7 **Q.** Do you get headaches?

8 **A.** Yes.

02:37:50

9 **Q.** Tell the judge what those headaches feel like on the
10 hot days.

11 **A.** Your headache gets you to where you are not wanting to
12 do anything because you just want to try to get out of the
13 dorm as much as you can to avoid the heat.

02:38:07

14 **Q.** To you does it feel like there is any difference
15 between the inside temperature at the Pack Unit and the
16 outside temperature?

17 **A.** No.

18 **Q.** Have you ever felt that it's cooler outside?

02:38:15

19 **A.** There is times; but when you do go outside, it feels
20 the same temperature as what is outside and what it is in
21 the dorm.

22 **Q.** Have you ever lived in any other environment as hot as
23 the Pack Unit?

24 **A.** No.

02:38:31

25 **Q.** Do you ever have difficulty sleeping?

1 THE COURT: Let me ask this: Have you been in
2 any other prisons?

3 THE WITNESS: In other prisons?

4 THE COURT: In other prisons, yes, sir.

02:38:44

5 THE WITNESS: No, sir. This is my first time.

6 THE COURT: Okay.

7 **Q.** (By Mr. Medlock) Did you do some time in the Bexar
8 County Jail?

9 **A.** Oh, yes.

02:38:50

10 **Q.** Was it air-conditioned at the Bexar County Jail?

11 **A.** Correct.

12 **Q.** Were you there during the summer?

13 **A.** Correct.

14 **Q.** Did you have any problems with the heat in the Bexar
15 County Jail?

02:38:59

16 **A.** No, sir.

17 **Q.** Do you have any difficulty sleeping in the summer at
18 the Pack Unit?

19 **A.** Yes.

02:39:02

20 **Q.** Tell the judge about that.

21 **A.** When you are sleeping at night, it gets real hot where
22 you are just tossing and turning; and you are just
23 sweating while you are asleep.

24 **Q.** Did you -- have you ever seen a correctional officer
25 have difficulty with heat in the summer?

02:39:16

1 **A.** Yes.

2 **Q.** Tell the judge about that episode.

3 **A.** It was -- I was in my dorm one day; and one of the
4 officers, he walked in sweating. And he told me how was I
5 doing. While he walked past -- he walked past the
6 restroom towards the back where there is a fan. And all I
7 seen is he collapsed. So everybody just stayed looking at
8 him. So I called the officer. I told him his officer
9 fell out.

10 So when he saw me, he got on the phone; and I told him
11 you need to get on your walkie-talkie. If you get on your
12 phone, it's going to take more longer to get help for him.

13 So at that time where I had went, Sergeant Manning had
14 went and a couple of other officers went; and they helped
15 him up and took him out.

16 After that, they asked for statements from the other
17 inmates. Nobody wanted to give a statement. But I gave a
18 statement and told them what happened, that he fell out.

19 **Q.** By "fell out" you mean collapsed?

20 **A.** Yes, sir.

21 **Q.** Was that an especially hot day when that happened?

22 **A.** Yes.

23 **Q.** Now, sir, have you ever been diagnosed with a
24 heat-related illness, meaning heat exhaustion or
25 heatstroke or heat cramps, at the Pack Unit?

1 A. Heat exhaustion.

2 Q. When did that happen?

3 A. Last summer.

4 Q. Was that on July the 4th of last year?

02:40:41 5 A. Yes, sir.

6 Q. Okay. Tell the judge what happened that day.

7 A. I was in a dorm, and it was really hot. So I started
8 feeling my body. I said, you know, when they call rec,
9 I'm going to try to go out and try to get some cool air.

02:40:54 10 When I went out to rec, one of my things for the weight is
11 for me to walk. So I started walking. But what I was
12 feeling from inside the dorm, when I went outside, it just
13 doubled what I was already feeling.

14 So sergeant -- I mean, Major Perez was out there. I
02:41:10 15 had asked him a question. But I didn't -- when I started
16 going home when rec was called to go to turn in, I started
17 feeling real bad. So I said -- I drank water. Still
18 feeling bad. Took a shower. Still was feeling bad. So I
19 asked one -- I got in front of the fan. That still didn't
02:41:29 20 make me feel better.

21 So I asked Officer Brooks if I could go to medical. I
22 needed medical assistance. He called down there. I went.
23 They gave me water, ice water. They put a fan in front of
24 me, laid me down and put like a little chill thing on my
02:41:46 25 neck.

1 When they took my temperature, they told me, Well,
2 your temperature is a little high. For us to get an
3 accurate temperature, we're going to have to do a rectum
4 thermometer to get an actual. It was kind of weird for me
5 at first. But she is like it is either you take it or you
6 go home.

7 So I said, You know, no. I'm feeling bad right now.
8 So I might as well. Let's do it.

9 When she took my temperature, she is like, oh, he is
10 going to the hospital. Your temperature is way too high.

11 So when they called the 9-1-1, Major Perez, Sergeant
12 Parker had went in; and they started asking her -- the
13 lady questions. When the ambulance got there, they were
14 saying what is going on.

15 She said, Well, he is going to the hospital.

16 No. He is lying because I was just talking to him
17 outside. He was running.

18 I wasn't running. I was walking. When he was out
19 there, he never seen me. I was talking to him at that
20 time.

21 So when she kept arguing about it, she is like, no,
22 sir, there is no way he can lie about it. It's a rectum
23 temperature. There is no way you can lie about it.

24 So then after a while he kind of like just went to the
25 side, and they took me to the hospital.

1 So when I went, they did the urine, blood and gave me
2 some fluids; and a couple of maybe, like, two hours later,
3 they told me I had heat exhaustion.

4 **Q.** And they told you you had heat exhaustion at the
5 hospital?

6 **A.** Yes.

7 **Q.** Was that -- what hospital did you go to?

8 **A.** That was St. Joseph's.

9 **Q.** I forgot to ask you earlier, sir: Which dormitory do
10 you live in at the Pack Unit?

11 **A.** I live in E dorm.

12 **Q.** And do you live in the upstairs or downstairs part of
13 E dorm?

14 **A.** I'm on the upstairs.

15 **Q.** And E dorm is the dorm where you have showers actually
16 in the dormitory?

17 **A.** Correct.

18 **Q.** Were you -- when you came back in from being outside
19 and were not feeling well, were you able to take a
20 cold-water shower at that point?

21 **A.** Yes.

22 **Q.** And did the cold-water shower help at all?

23 **A.** No.

24 **Q.** What did you do after you took the cold-water shower?

25 **A.** I got in front of the fan.

1 Q. And did sitting in front of the fan help at all?

2 A. No.

3 Q. Were you drinking water that day?

4 A. Yes.

02:43:49

5 Q. Were you drinking the -- how much water do you think
6 you had drank that day before you had the heat exhaustion?

7 A. Ten bottles of water.

8 Q. Did you drink more than you usually do that day?

9 A. Yes.

02:44:05

10 Q. Okay. I want to show you a portion of your medical
11 records, sir. This is Defendants' Exhibit Number 121. I
12 just want to go over this with you. It says that you
13 arrived in the clinic at the time was 15:10. That's about
14 3:10 in the afternoon.

02:44:24

15 Does that sound about right to you?

16 A. It was earlier than that.

17 Q. You think it was a little earlier than that?

18 A. Yes.

19 Q. It says that you were complaining your blood sugar

02:44:39

20 level might be too low or you got too hot. Is that what
21 you told the nurse?

22 A. No.

23 Q. What did you tell the nurse?

24 A. That I was being nauseated, lightheaded; and I felt --

02:44:50

25 I wasn't feeling well.

1 Q. Now, it says that at 15:15 that your core rectal
2 temperature was 102.3 and your blood sugar was 126. Do
3 you recall that?

4 A. Yes.

02:45:04

5 Q. Does that sound accurate to you?

6 A. Yes, sir.

7 Q. It says that at 15:20 they talked to the nurse
8 practitioner, Ms. Barbour, and that they received orders
9 to send you to the emergency room 9-1-1 for a diagnosis of
10 heat exhaustion. Does that sound accurate to you?

02:45:20

11 A. Right.

12 Q. How long did you spend at the emergency room?

13 A. I was there probably around three hours.

14 Q. When did you do -- where did you go after the
15 emergency room?

02:45:43

16 A. Back to the -- back to the unit.

17 Q. Where did you go once you got back to the prison?

18 A. I went back on the dorm.

19 Q. You went back to your dorm at E wing?

02:45:52

20 A. Yes, sir.

21 Q. About what time of day was that?

22 A. It was -- when I got back, it was already after shift
23 change, which was after 6:00.

24 Q. Was it dark out when you got back?

02:46:04

25 A. Yes.

1 Q. What happened the next day after the -- after you had
2 the heat exhaustion?

3 A. I went to work.

4 Q. What did you -- what was your job in the prison at
5 that time?

6 A. At the time, I was going through -- I was going
7 through vacation. So we are out on vacation. So they
8 gave me -- since the unit was short on hoe squad, they got
9 all these people down on vacation from education; and they
10 put us on the hoe squad.

11 Q. Let me just make sure I understand what you are
12 testifying. You were enrolled in an education program at
13 the prison?

14 A. Right.

15 Q. There was a little break, like a vacation from the
16 education program?

17 A. Yes, sir.

18 Q. So during your break from education you were put on
19 the hoe squad?

20 A. Correct.

21 Q. Tell the judge what the hoe squad is.

22 A. The hoe squad is where you pick vegetables, and there
23 is aisles like in a garden that you are planting like the
24 seeds of whatever vegetables that they have. You put it
25 in the ground. They put a stick in the ground, and you

1 put the whatever seed it is. And the person is behind
2 you, and they are just patting it with the dirt.

3 Q. So you work outside to do that?

4 A. Yes.

02:47:19

5 Q. What time of day were you doing that work in the hoe
6 squad?

7 A. It depends, because sometimes they will call us
8 between 6:30 and 7:00.

9 Q. In the morning?

02:47:28

10 A. Yes, sir.

11 Q. Do you have a different job now, sir?

12 A. Correct.

13 Q. What is your current job at the Pack Unit?

14 A. Paint squad.

02:47:39

15 Q. I'm sorry?

16 A. Paint squad.

17 Q. Paint squad?

18 A. Yes, sir.

19 Q. What have you been doing recently on the paint squad?

02:47:45

20 A. We have been painting. We have got little decals we
21 have with the word "respite." So all around the unit we
22 have been going around posting the respite signs.

23 Q. And when did you start doing that on the paint squad?

24 A. Last month.

02:48:06

25 Q. Have you ever gone to use a respite area of the Pack

1 Unit?

2 **A.** Yes.

3 **Q.** Tell the -- how many times have you done that?

4 **A.** Once.

02:48:15

5 **Q.** Was that before or after your heat exhaustion episode?

6 **A.** Before.

7 **Q.** Tell the judge about that time that you went to the
8 respite area at the Pack Unit.

9 **A.** It was in the -- in education. I went one time, but I

02:48:28

10 didn't like the way -- when you go in there any time you

11 want to get some air, some cool air, it's not up to you

12 how long you want to be in there. Some of the officers,

13 when they feel it's sufficient for them or if they think

14 that you are lying or something, they will tell you --

02:48:43

15 they will give you how many minutes they expect you to get

16 better. Like, you could be in there a couple of minutes.

17 Oh, you don't need it no more. You can go back home. So

18 it depends on what officers are working at the time.

19 **Q.** The time you went before your episode with the heat

02:48:57

20 exhaustion, how long did you actually get to spend in the

21 respite area?

22 **A.** Around 30 minutes.

23 **Q.** Can you go to the respite areas any time you feel

24 like?

02:49:08

25 **A.** No.

1 Q. Why do you say that?

2 A. Because it's whatever officer is on duty, there is
3 times that you can ask them; and they will either tell you
4 yes or no. And the majority of the time, they tell you no
5 because they just think you want to get out of the dorm to
6 go BS around.

7 THE COURT: Do you ever go to the library?

8 THE WITNESS: No.

9 THE COURT: Why not?

02:49:29 10 THE WITNESS: Because the library -- usually, I'm
11 in education. So I'm in there in the morning. And when
12 there is times that they do it, there are too many people;
13 and there is only -- they only allow a certain amount of
14 people to go in the library.

02:49:44 15 THE COURT: So is it always full?

16 THE WITNESS: Yes.

17 THE COURT: And do they put a limit on how long
18 you stay?

19 THE WITNESS: Sometimes, if there is visitors or
02:49:50 20 there is things going on, like sometimes the classrooms go
21 to the library. And they will have, like, the library is
22 full and there is a little bench and they have up to maybe
23 four people or five people that could sit down. But at
24 that majority of the time, they don't even go in there
02:50:06 25 that much.

Cross Examination of Carlos Huerta

1 THE COURT: How many people does the library
2 accommodate?

3 THE WITNESS: The library is maybe -- like my
4 class, it fills it up. So that's, like, 29 people.

02:50:15 5 THE COURT: Okay.

6 Q. (By Mr. Medlock) Sir, if respite were scheduled at
7 the Pack Unit, if you were told everyone in your dorm is
8 now going to go to a respite area for two to three hours
9 on the afternoon of the hottest days of the year, would
10 you go?

02:50:58 11 A. Yes.

12 MR. MEDLOCK: Pass the witness, Your Honor.

13 THE COURT: Okay.

14 **CROSS-EXAMINATION**

02:51:08 15 BY MR. WARNER:

16 Q. Thank you. Good afternoon, sir.

17 A. How are you doing?

18 Q. Let me ask you a similar question to the one you were
19 just asked. If going forward you could ask for respite
02:51:27 20 any time you wanted and get it and stay as long as you
21 want but you had to ask and no one could tell you no,
22 would you take advantage of that?

23 A. So you get to get your fresh air to get out of the hot
24 dorm, yes.

02:51:45 25 Q. Okay. So you would take advantage of respite in those

1 circumstances just as much as if somebody came and told
2 you you had to go, right?

3 **A.** I couldn't -- I won't say like the words you say it;
4 but I could say if they ask who wants to go to respite, at
02:52:05 5 the time I would say yes because, like I said, it gets
6 real hot in the dorm. So you would want to take some
7 advantage to get out of the dorm and get out of the heat.

8 **Q.** All right. So if you knew that you could ask and you
9 would be -- whoever you asked would say yes and you could
02:52:20 10 go, you would do that, right?

11 **A.** Yes.

12 **Q.** Let me ask you about this incident last year in 2016.
13 So you had spent at least an hour outside in the
14 recreation yard, right?

02:52:43 15 **A.** Correct.

16 **Q.** During that time you hadn't just been walking. You
17 had been running and lifting weights, correct?

18 **A.** That's incorrect.

19 **Q.** That's incorrect?

02:52:53 20 **A.** Yes, sir.

21 **Q.** Could I get 121 up, please, for ID. This is the same
22 document that plaintiffs just showed you. All right. In
23 any case, this is Defendants' Exhibit Number 121 for
24 identification.

02:53:22 25 **THE COURT:** Are you moving for its admission?

1 MR. WARNER: I'm sorry. If there is no
2 objection, I'll definitely move for that.

3 (Defendants' Exhibit Number 121 offered into
4 evidence.)

02:53:33 5 THE COURT: Any objection?

6 MR. MEDLOCK: Some parts of this document contain
7 hearsay and hearsay within hearsay, Your Honor. So we
8 would object to that.

9 THE COURT: Well, there again, when I'm sitting
02:53:41 10 without a jury, I don't mind. I can filter through
11 hearsay. So I'm going to allow it.

12 (Defendants' Exhibit Number 121 admitted into
13 evidence.)

14 MR. WARNER: Thank you, Your Honor.

02:53:48 15 **Q.** (By Mr. Warner) So this is the medical report from
16 this incident in July of 2016, right? Are you able to see
17 that on your screen?

18 **A.** Yes.

19 MR. MEDLOCK: Your Honor, we would object to it
02:53:58 20 as being characterized as "a medical report." There are
21 parts of it that are medical records. There are parts of
22 it that are not.

23 THE COURT: I'll keep that in mind.

24 MR. MEDLOCK: Okay.

02:54:08 25 **Q.** (By Mr. Warner) In any case, could we go to Page 2,

1 please, of this, TDCJ 111229. In any case, it certainly
2 is the urgent emergent care record, right? That's what it
3 says up top?

4 **A.** Yes, sir.

02:54:24 5 **Q.** Okay. Could we move to the next page, please --
6 actually, the page after that. So ending in 231. Okay.

7 So here about halfway down the page you see there is a
8 time entry of 15:10?

9 **A.** Correct.

02:54:52 10 **Q.** And this just states that you were out in the
11 recreation yard for about an hour and became weak, right?

12 **A.** Yes, sir.

13 **Q.** That's accurate?

14 **A.** Yes.

02:55:01 15 **Q.** Okay. Great. Could we put up what I think is 56 for
16 identification, please.

17 So there was an investigation into this incident,
18 right? Into this incident that you suffered?

02:55:32 19 **A.** I wouldn't say an investigation because it was just
20 that one day when they talked to me. After that, they
21 didn't never ask me any other questions or nothing like
22 that.

23 **Q.** All right. So there was an interview at some point of
24 you? Somebody spoke to you?

02:55:42 25 **A.** The only thing that they talked to me was -- she is

1 the lady that is like -- I don't know how to say it. The
2 one that gives you advice of drinking water and stuff like
3 that. I don't know the job title they have.

4 THE COURT: Nurse practitioner or physician's
5 assistant or what?

6 THE WITNESS: She is in the -- she is in the
7 offices where the major is at. She says she is in charge.
8 Like whenever something like this happens, they go and
9 talk to you and they either give you advice and make sure
10 you are keeping hydrated and stuff like that.

11 THE COURT: Okay. All right.

12 Q. (By Mr. Warner) Could I ask you to look at the top of
13 this document, please. Do you see the first line there
14 where it says, "At approximately 15:10 hours Defendant
15 Huerta, Carlos, Number 1910618"? Is that you?

16 A. Yes, sir.

17 Q. Earlier in that line it references the date of
18 July 4th of 2016. That's the date of the incident you
19 described, right?

20 A. Yes.

21 Q. Okay. And this paragraph here describes complaining
22 of a headache with dizziness, seen by medical staff with
23 an elevated temperature, right?

24 A. Yes.

25 Q. Okay. And then it says that you went to St. Joseph's

1 Hospital for further evaluation, right?

2 **A.** Right.

3 **Q.** Okay. So all those facts are true?

4 **A.** Yes, sir.

02:57:18

5 **Q.** Okay. Would you agree with me then that this appears
6 to be an incident report reflecting the incident that
7 happened to you on July 4th of 2016?

8 **A.** Yes.

9 **Q.** All right.

02:57:34

10 MR. MEDLOCK: Your Honor, I just want to be clear
11 that he is adopting the portion that he has been shown
12 thus far, just for the record.

13 THE COURT: He is doing what now? I'm not sure I
14 understand the objection.

02:57:46

15 MR. WARNER: I didn't follow the objection.

16 MR. MEDLOCK: I'm sorry. Counsel asked him to
17 endorse the document.

18 THE COURT: What you see on the screen, you can
19 agree with?

02:57:53

20 THE WITNESS: Yes. For the report.

21 THE COURT: All right. That's fine.

22 **Q.** (By Mr. Warner) Do you agree that this appears to be
23 a document reflecting an investigation into the incident
24 that we have been discussing?

02:58:02

25 **A.** I look at it more as a report.

1 Q. A report?

2 A. Yes.

3 Q. Do you agree that it's a report?

4 A. Yes.

02:58:08 5 Q. About that incident?

6 A. Correct.

7 Q. All right.

8 MR. WARNER: I would like to offer 56, Your
9 Honor?

02:58:12 10 (Defendants' Exhibit Number 56 offered into evidence.)

11 THE COURT: Any objection?

12 MR. MEDLOCK: Your Honor, he is not qualified.

13 He has never seen this document before. He couldn't
14 possibly authenticate it or explain how it came to be
02:58:22 15 created. Again, we're talking about portions of the
16 document that are not just these pages.

17 MR. WARNER: Your Honor -- I'm sorry. I didn't
18 mean to step on you.

19 MR. MEDLOCK: Is there -- Counsel, are there
02:58:32 20 additional pages to this?

21 MR. WARNER: There are. But, Your Honor, the
22 basic rule of authentication is just that there is
23 sufficient facts to show that the document is what it
24 purports to be. This purports to be a report of this
02:58:45 25 incident, and I think it's been fairly well-established

1 that this clearly is a report of this incident.

2 THE COURT: Who wrote this?

3 MR. WARNER: This is a standard TDCJ produced
4 document. I don't know who wrote it.

02:58:59

5 MR. MEDLOCK: If I could voir dire him for a
6 second, Your Honor.

7 THE COURT: Okay.

8 **VOIR DIRE EXAMINATION**

9 BY MR. MEDLOCK:

02:59:03

10 **Q.** Mr. Huerta, have you ever seen this document before
11 today?

12 **A.** No.

13 **Q.** Did you have anything to do with the creation of this
14 document?

02:59:09

15 **A.** No.

16 **Q.** Have you ever seen a document like this before today?

17 **A.** No, sir.

18 MR. MEDLOCK: I don't think he can aid in
19 authenticating this document, Your Honor.

02:59:19

20 THE COURT: Without knowing who wrote it, at
21 least, I think that's too much for me to overlook. I'm
22 not going to allow it.

23 MR. WARNER: All right.

24 **CROSS-EXAMINATION (continued)**

02:59:28

25 BY MR. WARNER:

1 Q. Could I ask you to move forward in this document for
2 identification just one page.

3 Sir, were you, in fact, on -- this document states
4 that you were interviewed and that you were on a
5 three-week break from something called C -- s-c-h-o-o --
6 okay. School. That's great. You were on a three-week
7 break from school and were about to start a job in the
8 field. Are those facts true?

9 A. Yes.

10 Q. You were on a three-week break from school?

11 A. Correct.

12 Q. And you were about to start a three-week break in the
13 field?

14 A. Correct.

15 Q. Okay. And is it true that at about 12:30 hours you
16 participated in the afternoon recreation session?

17 A. Correct.

18 Q. All right. So, so far both statements here are
19 correct?

20 A. Yes.

21 Q. The next line says you worked out by jogging around
22 the recreation yard several times and lifting weights. I
23 presume that you dispute that line?

24 A. Yes.

25 Q. So your testimony is that you did not lift weights or

1 jog that day?

2 **A.** Correct.

3 **Q.** All right. Do you recall the interview in which the
4 statements, the first two statements that you agreed with,
5 were collected from you?

03:01:22

6 **A.** This is the one from -- you are talking about this one
7 right here?

8 **Q.** Yes. These first two sentences here that I read to
9 you are correct, right?

03:01:34

10 **A.** Yes.

11 **Q.** And they talk about the fact that you had a three-week
12 break from school, right? And that's not something that
13 appeared in -- correct?

14 **A.** Yes, sir.

03:01:44

15 **Q.** And that's not something that appeared in the medical
16 report or anything?

17 **A.** No.

18 **Q.** Okay. So do you recall relating that fact to someone
19 who was looking into this incident?

03:01:53

20 **A.** No.

21 **Q.** Okay. But that's information that you had at that
22 time, right?

23 **A.** Information to --

24 **Q.** You knew that you were on a three-week break from
25 school?

03:02:08

1 A. Yes.

2 Q. And in order to write this information down here,
3 someone would have to collect it from you, correct?

03:02:19

4 A. Well, I knew -- to answer that question that you are
5 asking me about, you are asking like if I knew about the
6 job that I was going to get?

7 Q. I'm asking if you knew that you had a three-week break
8 from school.

9 A. Yes.

03:02:27

10 Q. All right. So you went back inside and after you --
11 after your hour or so in the recreation yard, right?

12 A. Right.

13 Q. And you began to not feel great?

14 A. Right.

03:02:50

15 Q. All right. And you took -- you took a cold shower?

16 A. Correct.

17 Q. How long would you say that you were in that cold
18 shower?

19 A. I was in there, like, around four or five minutes.

03:03:01

20 Q. Why did you choose to get out after four or five
21 minutes?

22 A. Because that's usually what my -- my showers consist
23 of every day.

24 Q. You could have stayed in longer?

03:03:12

25 A. I could have, but like I have -- I have a daily

1 routine, and that's what I usually take is five minutes.

2 So I don't usually take longer because there are a lot of
3 people in the dorms.

4 **Q.** All right. You didn't necessarily know that you had a
5 problem yet, did you? Did you?

6 **A.** Well, that was -- that was the extra one where I was
7 already feeling it. So I took -- usually I don't take
8 cold showers. I usually take hot showers. The way I was
9 feeling that day, I took a cold shower to see if it would
10 help me, you know what I mean, to cool my body down.

11 **Q.** But you only stayed in four or five minutes?

12 **A.** Yes.

13 **Q.** All right. And shortly thereafter, you reported
14 yourself to medical?

15 **A.** Correct.

16 **Q.** All right. And they told you they needed to take your
17 temperature?

18 **A.** Correct.

19 **Q.** And they told you they needed to do it rectally,
20 right?

21 **A.** Correct.

22 **Q.** Okay. And you understand that that's a real medical
23 tool, right?

24 **A.** At first it was kind of -- I didn't understand it as
25 much until I asked the lady that was working in there.

1 But she cleared up to me and told me that that was the
2 only precise way to get an accurate temperature. So I
3 allowed it to -- because I was feeling sick. So I told
4 her to go ahead and go through with it.

03:04:30

5 **Q.** Got it. All right. Okay. And you had a 102-degree
6 temperature, right?

7 **A.** Yes.

8 **Q.** And on that basis, they sent you to the hospital?

9 **A.** Correct.

03:04:44

10 **Q.** Where you were treated?

11 **A.** Say that again.

12 **Q.** You were treated at the hospital? Somebody saw you at
13 the hospital?

14 **A.** Yes.

03:04:51

15 **Q.** Okay. The judge asked you some questions about the
16 library. Do you recall that?

17 **A.** Yes.

18 **Q.** All right. Now, you said the library is a pretty good
19 space, about 29 people?

03:05:15

20 **A.** Correct.

21 **Q.** All right. Now, were you referring to the law library
22 or the regular library?

23 **A.** Well, the way it separate -- like in the library, you
24 have your library right here. There is a wall with books,
25 a bookshelf and then the law library. So it's separate.

03:05:27

1 So the law library, nobody goes in there. It's only the
2 library and the benches that they have over there.

3 **Q.** You were referring to the regular library that they
4 have over there?

03:05:41

5 **A.** Right.

6 **Q.** Inmates sign up to use the regular library, right?

7 **A.** No. They just -- you mean like when they check out
8 books or supplies?

03:05:53

9 **Q.** I'm asking if you sign up to spend time in the
10 library.

11 **A.** No.

12 **Q.** You don't do that?

13 **A.** No.

14 **Q.** Do you sign up to spend time in the law library?

03:05:57

15 **A.** The law library, yes. They have to do an I-60 to go
16 into the law library.

17 **Q.** All right. So how -- how do you find out on a daily
18 basis whether you can use the regular library?

03:06:13

19 **A.** Can you be more specific on what you are trying to ask
20 me?

21 **Q.** If you want to use the library, what do you do?

22 **A.** Well, that's what I'm trying to figure out what you
23 are asking. Like use it for a respite or use it to go
24 check out books?

03:06:23

25 **Q.** Just to go check out books and do library stuff.

1 **A.** To check out books they usually call the certain dorms
2 at a time. Every dorm has its certain days.

3 **Q.** All right. Do you typically go when it's your dorm's
4 time?

03:06:34

5 **A.** I go when my -- I'm in GED class. So every Friday our
6 class goes to the library.

7 **Q.** How long are you there?

8 **A.** For three hours.

9 **Q.** Three hours on a Friday?

03:06:45

10 **A.** Yes. That's every day.

11 **Q.** I'm sorry?

12 **A.** We're in class every day for three hours.

13 **Q.** Every day for three hours you are in the library?

14 **A.** No. I'm in the GED.

03:06:55

15 **Q.** In the education wing?

16 **A.** Correct.

17 **Q.** Okay. So the education wing attaches to the library,
18 right?

19 **A.** Yes.

03:07:00

20 **Q.** They are all in the same sort of area?

21 **A.** Correct.

22 **Q.** They are all air-conditioned, right?

23 **A.** Yes.

03:07:08

24 **Q.** Okay. So on a daily basis, is it correct, then, that
25 you spend three hours in the education building because of

1 your classes?

2 **A.** Correct.

3 **Q.** Monday through Friday?

4 **A.** Yes.

03:07:14 5 **Q.** What about -- not Saturday and Sunday?

6 **A.** No.

7 **Q.** Okay. So five days a week you spend three hours in an
8 air-conditioned environment, right?

9 **A.** Correct.

03:07:22 10 **Q.** Just because of your normal schedule?

11 **A.** Yes.

12 **Q.** But that's not in the library itself? That's in a
13 classroom?

14 **A.** Correct.

03:07:36 15 THE COURT: It's an air-conditioned space or is
16 it not?

17 THE WITNESS: Yes, sir.

18 THE COURT: Okay.

19 **Q.** (By Mr. Warner) How many classrooms are back there?

03:07:44 20 **A.** There is three -- there is, like, five.

21 **Q.** Five classrooms?

22 **A.** There is three for GED and then there is some
23 classrooms in the back and then the one, like, for the
24 employees that they could go in there.

03:07:58 25 **Q.** So how many classrooms are regularly used, if you

1 know, by inmates for studying, for school?

2 **A.** Most of the time it's three; but they have, like,
3 where they do -- it's like the Muslims they have -- like
4 they use the one in the back. So a majority of the time
5 it will be four classrooms that will be used.

6 **Q.** So there are four classrooms in the education wing
7 that are regularly used by inmates for school?

8 **A.** Correct.

9 **Q.** All right. And there are -- are they -- are they
10 usually conducting school or something with inmates during
11 business hours?

12 **A.** Correct.

13 **Q.** Monday through Friday?

14 **A.** Yes, sir.

15 **Q.** What about weekends?

16 **A.** I know they do the -- it's like the Muslims do their
17 own thing on the weekends.

18 **Q.** So there are people back there on the weekends but
19 maybe fewer; is that fair?

20 **A.** Correct.

21 **Q.** Okay. How many people fit in one of these classrooms
22 for one of your classes when you are in school?

23 **A.** At my classroom right now, we have 29. So it could
24 probably -- you know, they could fit, like, 31 students,
25 you know.

1 Q. All right. So you put between 29 and 31 students in
2 one of these classrooms every day?

3 A. Yes.

4 Q. For three hours?

03:09:19

5 A. Correct.

6 Q. And the same thing happens in the other three or four
7 classrooms that are next door?

8 A. The three one, yes.

03:09:34

9 Q. And then -- oh, I'm sorry. There is the three and
10 then there is the one used for religious purposes,
11 correct?

12 A. Correct.

13 THE COURT: Is there one set of classes in the
14 morning and one in the afternoon?

03:09:42

15 THE WITNESS: Yes. They have changes. It's the
16 changes and then the two GED classes in the morning. In
17 the afternoon they have the two GED classes, and they
18 have -- there is -- it's another one. There is another
19 class that the changes has. It just changes a different
20 name to the afternoon.

03:09:58

21 THE COURT: I understand.

22 Q. (By Mr. Warner) So a tiny bit of math. Typically
23 there are -- if there are, let's say, 30 -- you said 29 to
24 31, right?

03:10:15

25 A. Right.

03:10:31

1 Q. If there are 30 inmates in a classroom and there are
2 three classrooms running during the day between 9:00 and
3 4:00, that's 90 inmates who are in school in the education
4 wing at a time on a given day, Monday through Friday,
5 right?

6 A. Correct.

7 Q. Okay. And that area is all air-conditioned, right?

8 A. Yes.

03:10:38

9 Q. And those people -- they are not seeking respite,
10 those people, right?

11 A. No, sir.

12 Q. They are just at school?

13 A. Right.

03:10:44

14 THE COURT: I thought I heard you say five
15 classrooms. Is it five or three?

16 THE WITNESS: They have five classrooms which
17 they could use, like, the two back ones.

18 THE COURT: Yeah.

03:10:53

19 THE WITNESS: They could use them for like --
20 like they have Spanish ladies that go and teach certain
21 days, and they have more. So there is five all together
22 the classrooms they could use.

23 THE COURT: Only three are used each day?

24 THE WITNESS: Yes, sir.

03:11:06

25 Q. (By Mr. Warner) And those areas are in addition to

1 the library itself?

2 **A.** Correct.

3 **Q.** All right. But that whole wing, five classrooms, law
4 library, regular library, it's all air-conditioned?

03:11:23

5 **A.** Correct.

6 **Q.** Okay.

7 **A.** Could I add something? On the other classroom it is
8 called cognitive, the one I was trying to figure out.

9 **Q.** What do they do there?

03:11:34

10 **A.** That one is like the same as changes. It's in the
11 afternoon though. They change it from the two GED to the
12 cognitive.

13 **Q.** They conduct some other class in the fifth classroom
14 as well?

03:11:44

15 **A.** No. It's the three in the morning and the same thing
16 in the afternoon. They have all day the education.

17 **Q.** Are you just saying that they switch which room they
18 are using?

19 **A.** No. They are in the same classroom. One of the first
03:11:56 20 ones, it changes to cognitive. So it's a whole different,
21 I guess, curriculum you would say.

22 **Q.** Oh, okay. So it's a different curriculum?

23 **A.** Yes.

24 **Q.** But there are still 30 people in there?

03:12:08

25 **A.** Right.

1 Q. Do you find that spending time in the air-conditioned
2 schoolhouse is helpful for you?

3 A. Yes.

4 Q. Have I -- are you in school every day, Monday through
5 Friday?

6 A. Correct.

7 Q. So have I calculated -- you said three hours a day,
8 right?

9 A. Yes, sir.

10 Q. So I have calculated correctly that, just in a typical
11 week just in school, you spend 15 hours in
12 air-conditioning?

13 A. Yes.

14 Q. Have you ever taken a cool-down shower that lasted
15 longer than five minutes?

16 A. The cool-down, sometimes.

17 Q. What is the longest cold shower that you think you
18 have taken at the Pack Unit?

19 A. Probably it will be, like, maybe between on, like,
20 five to seven.

21 Q. Anyone ever tell you that you are not allowed to take
22 a cold shower for longer than seven minutes?

23 A. No. Because where I'm at, we have our own showers.

24 Q. So is it fair to say that you have access to the cold
25 shower pretty much whenever you want it?

1 **A.** Yes.

2 **Q.** All right. You talked a bit about, in dealing with
3 respite, what your experience has been with different
4 officers. In 2017, this year, this summer, has any
5 officer told you that you cannot access a respite area if
6 you made the request?

7 **A.** Myself?

8 **Q.** You, you yourself?

9 **A.** No. I haven't asked that.

10 **Q.** You haven't asked that?

11 **A.** No.

12 **Q.** All right. And if it could be established that you
13 could access a respite area whenever you wanted and no
14 officer could limit you to 30 minutes, that would keep you
15 cool if you needed it, fair?

16 **A.** It depends on how long you are in there because there
17 is times that you could go in there; but right when you
18 leave and you are walking to wherever you are going, you
19 start being affected right away.

20 **MR. WARNER:** All right. Thank you, Your Honor.
21 Nothing further.

22 **THE COURT:** Any redirect?

23 **MR. MEDLOCK:** Just a bit, Your Honor.

24 **REDIRECT EXAMINATION**

25 **BY MR. MEDLOCK:**

1 Q. There are -- I think the testimony earlier was that
2 there are 110 other men in the dorm with you; is that
3 right?

4 A. There is -- the dorm I'm in, we have 56.

03:15:32

5 Q. There are 56 in your dorm. And how many cold-water
6 showers are there in your dorm with 56 men?

7 A. One.

8 Q. Is there a line to get -- to use the cold-water
9 showers?

03:15:43

10 A. Yes.

11 Q. The time -- on July 4th of last year, 2016, when you
12 had the heat exhaustion, you said you showered for four to
13 five minutes to try to cool off?

14 A. Correct.

03:15:57

15 Q. After spending four to five minutes in the cold
16 shower, was that helping you at all?

17 A. No.

18 Q. Just to clarify, you said the -- you talked about the
19 various classrooms. Are all those classrooms about the
20 same size?

03:16:14

21 A. Yes.

22 Q. And you have mentioned a changes class a couple of
23 times. I think the Court might benefit from knowing what
24 that is as you understand it.

03:16:23

25 A. What that is is when you get parole, it's a class to

1 get you ready for your development when you get out on
2 your release; and they help you find jobs and just set you
3 up on the right path so when you do get out.

4 MR. MEDLOCK: Thank you very much for your time.
5 We'll pass the witness.

6 THE COURT: Okay. You may step down. You are
7 free to go. Thank you.

8 Okay. We're going to try another witness?

9 MR. EDWARDS: Yes, Your Honor. The plaintiffs
10 call Keith Cole.

11 THE COURT: Mr. Cole, before you take your seat,
12 Mr. Rivera will administer the oath.

13 (Witness sworn by the case manager.)

14 THE WITNESS: So help me God, yes.

15 **KEITH COLE,**
16 having been first duly sworn, testified as follows:

17 **DIRECT EXAMINATION**

18 BY MR. EDWARDS:

19 **Q.** Good afternoon, Mr. Cole.

20 **A.** Good afternoon.

21 **Q.** Would you kindly state your name for the record.

22 **A.** Keith Milo Cole.

23 **Q.** I'm going to try to be as brief as possible, but you
24 answer as thoroughly as you need to. All right?

25 **A.** Yes, sir.

1 Q. Okay. How old are you, sir?

2 A. 63.

3 Q. Where are you from originally?

4 A. Baton Rouge, Louisiana.

03:17:38 5 Q. How long have you been incarcerated in the Texas
6 Department of Criminal Justice?

7 A. Over 23 years.

8 Q. How long have you lived on the Pack Unit?

9 A. Six years.

03:17:47 10 Q. Do you have a job at the Pack Unit?

11 A. No, sir. I'm medically unassigned.

12 Q. Would you describe for the Court exactly what that
13 means.

03:17:57 14 A. It means that I'm not required to work because of my
15 medical conditions.

16 Q. And what are those medical conditions briefly, sir?

17 A. I have been diagnosed with cardiovascular disease,
18 triple vessel severe, hypertension, high cholesterol and
19 diabetes.

03:18:10 20 Q. And those are -- those are diseases that are listed
21 on -- you were here when the chart went up on the screen
22 listing those comorbidities, right?

23 A. That is correct.

03:18:24 24 Q. And you have been told that those comorbidities do
25 make you more vulnerable in the heat, correct?

1 **A.** Yes, sir.

2 **Q.** Okay. You have been told that by the doctors at UTMB,
3 correct, or nurses at UTMB?

4 **A.** No, sir. I have never been informed by any of those.

03:18:36

5 All my information came from me personally reading the
6 health service policy manual in our offender law library.

7 **Q.** Okay. And in what dormitory do you live in, sir?

8 **A.** I live in 6 dorm in B section of the main building.

03:18:52

9 **Q.** And that, I take it, does not have air-conditioning,
10 correct?

11 **A.** No, sir, it does not.

12 **Q.** Before I get into kind of how the heat affects you,
13 those medical conditions you talked about, the
14 hypertension, the diabetes, do they affect you on a
15 day-to-day basis?

03:19:10

16 **A.** To be honest with you, my -- the only thing that
17 really affects me would be my cardiovascular disease.

18 **Q.** How does it affect you? Does it make you tired? What
19 does it do?

03:19:20

20 **A.** Absolutely. I'm very limited on the type of things
21 that I can do. I can't get upset. I can't move around
22 too fast. I can't overexert myself. If I do, I'll have
23 extensive chest pains.

03:19:36

24 **Q.** And it has been explained to you that's why you cannot
25 work, correct?

1 A. Yes, sir.

2 Q. Do you take prescription medications?

3 A. Yes, sir, I do.

4 Q. You take a fair number, correct?

03:19:52

5 A. That is correct.

6 Q. Okay. And I take it you have reviewed the list that
7 we saw earlier, and many of those medications are on that
8 list?

9 A. That's correct.

03:20:03

10 Q. Well, rather than belabor that, why don't you tell
11 Judge Ellison what it's like to live in the Pack Unit.

12 A. During the summertime?

13 THE COURT: Yes, sir.

14 THE WITNESS: Yes, sir.

03:20:23

15 Q. (By Mr. Edwards) Thank you for that qualification,
16 sir. Yes, sir. Yes. I appreciate it.

17 A. Yes, sir. It's -- at times it can be extremely
18 difficult. Prior to this lawsuit, it was extremely
19 difficult. You know, since this lawsuit, I have to admit
20 that things have improved quite a bit.

03:20:36

21 THE COURT: I'm interested in that. What has
22 improved since the filing of the lawsuit?

23 THE WITNESS: They have given us ice water. When
24 I came to the unit prior to this lawsuit, we didn't even
25 have access to ice water. As a matter of fact, we didn't

03:20:52

1 have a water fountain at all. We had to drink out of the
2 sinks.

3 Since this lawsuit, they have installed additional
4 fans in all of our dorms that at times are beneficial. At
03:21:06 5 times they can be detrimental. But they are better than
6 what we had before.

7 And, also, the respite program has been implemented;
8 and it's been beneficial, also.

9 THE COURT: You couldn't -- you couldn't get ice
03:21:18 10 water before the suit was filed?

11 THE WITNESS: No, sir. Here is what it was. We
12 had access. We would get a water cooler full in the
13 daytime in the morning, and we probably wouldn't see any
14 more ice for the rest of the day. It wasn't something
03:21:31 15 that was on a consistent basis.

16 Since the lawsuit, I have to admit that we have ice
17 water 24 hours a day, 365 days a year; and I can honestly
18 say that I rarely ever see it run out.

19 THE COURT: Okay.

03:21:44 20 **Q.** (By Mr. Edwards) But to be crystal clear, that was
21 not the case prior to the lawsuit being filed?

22 **A.** Positively absolutely it was not.

23 **Q.** Okay. And I want to talk to you about cool-down
24 showers. You heard testimony about that, correct?

03:21:54 25 **A.** Yes, sir.

1 Q. Now, there has been testimony now that they are -- you
2 can take a cool-down shower at 4:30 in the morning, 11:30
3 at night, any time you want, sir. Is that your
4 experience?

03:22:05

5 A. To my knowledge, that's not -- that's not a true
6 statement. I mean, there is absolutely nobody that I know
7 that can get a cool-down shower unabated at any time they
8 want to. It just does not happen on our unit. It's not
9 true.

03:22:20

10 Q. Okay. Now even if it were true, is it a physical
11 possibility for all 1,400 inmates to take a cool-down
12 shower at once?

13 A. Oh, that couldn't be done.

14 Q. Why not?

03:22:31

15 A. Well, you don't have enough shower stalls. Now, I
16 believe they could -- if they called it, it would have to
17 be done over a period of several hours. But it could be
18 accommodated. They just couldn't do it all at one time.

03:22:47

19 Q. Since the filing of the lawsuit, they have done more
20 in terms of calling out cool-down showers and putting
21 those on a schedule, right?

22 A. In fact, prior to the lawsuit we didn't have cool-down
23 showers at all.

03:22:56

24 Q. Prior to the lawsuit, no cool-down showers. After the
25 lawsuit, there was a program put in place to have some

1 cool-down showers?

2 **A.** That is correct.

3 **Q.** Okay. And now -- now we have been told that that
4 is -- there is a morning offering of a cool-down shower
03:23:09 5 and an evening offering of a cool-down shower. That's
6 consistent with your experience, correct, sir?

7 **A.** That's pretty much it, right.

8 **Q.** Okay. Now, we have also been told that that is
9 actually -- well, have you ever been provided a piece of
03:23:21 10 paper or seen anything on a bulletin board that says you
11 have access to cool-down showers 24 hours a day?

12 **A.** No, sir. There is absolutely nothing like that ever
13 been posted. It does not exist.

14 **Q.** Okay. Have you ever been provided a piece of paper or
03:23:37 15 seen anything on a bulletin board that says you can go to
16 respite 24 hours a day simply upon request?

17 **A.** No, sir. That's not what my understanding is of what
18 we have to deal -- the deal you were just showing us
19 earlier, the notice to offenders.

03:23:53 20 MR. EDWARDS: Will you put the poster up, please.

21 **A.** When I look at that, what I see is that before I can
22 go to respite, I have to be sick. I have to be injured in
23 some type of way. It starts off by saying "areas are
24 being made available to offenders who are experiencing
03:24:07 25 difficulty due to the heat." And it ends by saying, "If

1 you are experiencing difficulty due to the heat, please
2 notify a staff member."

3 This is telling me that I have to be injured before I
4 can go to respite.

03:24:18

5 **Q.** (By Mr. Edwards) Now, I'll represent to you that this
6 policy, deficient as it is -- let me withdraw that.

7 This policy called "notice to offenders" didn't come
8 about until 2015, more than a year after the lawsuit was
9 filed; isn't that correct?

03:24:37

10 **A.** That is correct.

11 **Q.** Okay. Prior to this lawsuit being filed, there was no
12 respite policy at all, was there?

13 **A.** I think it could've saved a lot of lives if there
14 would have been one.

03:24:50

15 **Q.** Okay. Now, a year afterwards, this got put up; and
16 your expectation of that, to be clear, was that you had to
17 be sick or have difficulties during the heat; is that
18 fair?

19 **A.** That is the understanding right now.

03:25:04

20 **Q.** Okay. Now, you have since come to learn that you
21 don't have to be sick in order to use respite, correct?

22 **A.** And the only way I found that out was from you.

23 **Q.** Okay. Let's be a little more clear about that. When
24 we were at the last preliminary injunction, a corporate

03:25:22

25 representative for the Texas Department of Criminal

1 Justice named Cody Ginsel testified that 24/7 on demand
2 access to respite was, in fact, the policy at the Pack
3 Unit and system-wide.

4 Now, did you believe us when we told you that
5 initially?

6 **A.** Initially, no, we didn't. I couldn't conceive that.

7 **Q.** We provided -- we provided the testimony to you,
8 though; isn't that correct?

9 **A.** That is correct.

10 **Q.** Okay. Did that convince you that, yes, you now had
11 access?

12 **A.** It convinced me that we had access, yes.

13 **Q.** Now, let me ask you about that. I want to talk to you
14 about training. Have you ever received training, an
15 actual statement from someone from TDCJ who comes and
16 talks to you and says respite is available 24 hours a day,
17 seven days a week, no ifs, ands or buts?

18 **A.** No, sir, they haven't. In fact, I even asked the
19 safety officer, Ms. Allison. I have asked her about that.

20 How come you are not giving us training on respite? You
21 posted these movies and stuff about heat exhaustion and
22 things happening in the workplace. Why don't you give us
23 something about respite? She has never responded.

24 **Q.** Now, we heard talk about a video. Do you recall that?

25 **A.** Yes, sir.

1 Q. That video -- the first time you have ever been
2 provided that video was this year, correct?

3 A. I think I saw it last year.

4 Q. Okay. After the preliminary injunction?

03:26:43

5 A. Right.

6 Q. Okay. So -- okay. Two years after the lawsuit was
7 filed. Okay.

8 A. Yes, sir.

03:26:51

9 Q. Now, on that video, you saw that again this year,
10 right?

11 A. That's correct.

12 Q. No mention whatsoever of respite areas on that video,
13 is there?

14 A. None whatsoever that I know of.

03:26:58

15 Q. Do you know of any reason why that video couldn't have
16 contained the sentence "respite areas are available
17 24 hours a day, seven days a week to all inmates at the
18 Pack Unit"?

19 A. You would think that would be the thing to do.

03:27:11

20 Q. Do you know of any reason why that video couldn't
21 contain the statement, "We really think for your own
22 benefit that you would be protected from potential danger
23 if you went to respite a certain amount of time"? Was
24 that on the video?

03:27:24

25 A. No, sir.

1 MR. WARNER: Objection. Leading. Foundation.

2 THE COURT: Yeah. I think these questions have
3 been a bit leading.

4 MR. EDWARDS: Okay.

03:27:32

5 **Q.** (By Mr. Edwards) Do you know of any reason why such
6 statements like that couldn't be on the video, sir?

7 **A.** Why they are not on the video?

8 MR. WARNER: Objection. Leading.

9 THE COURT: I'm going to allow that one.

03:27:41

10 **A.** I personally believe that the respite program, if it
11 was a full-scale program where all the offenders knew they
12 had unabated access to it, it wouldn't work.

13 THE COURT: Why is that? Too much crowding?

14 THE WITNESS: Yes, sir. It would be impossible.

03:27:54

15 There is absolutely no way that they could sit here and
16 say that they can accommodate. As a matter of fact, if 15
17 or 20 people try to go to respite, they have a hard time
18 just accommodating us. That's about how many use respite
19 on my unit right now. It's only about 15 of us. The same
20 faces every day.

03:28:09

21 And if they were to, let's say, send 10 percent of the
22 offenders, 140 or 150 offenders to respite at one time,
23 there is just no place to actually put them during the
24 day. It just can't be done.

03:28:25

25 And the schools -- the schools they are talking about

1 that they could use for respite, during the daytime they
2 have classes going on in there.

3 And all of the different places that they have listed
4 right here, there is nothing there that you can
5 accommodate a whole lot of offenders at one time.

6 Now when it's just a few like it is now, respite is
7 working fine.

8 THE COURT: I'm having trouble on this. So only
9 a few people are taking advantage of respite right now?

10 THE WITNESS: Right now, sir, there is about 15
11 offenders who religiously go to respite every day.

12 THE COURT: Now, why do those 15 know they can do
13 that and others don't know they can do that?

14 THE WITNESS: Well, you have certain offenders
15 living more assertive than others; and they are not afraid
16 to get up against the system. They will get out, like I
17 do. But the vast majority of offenders on my unit, they
18 are afraid. They just don't know.

19 Q. (By Mr. Edwards) Let's also discuss the possibility
20 of everybody going to respite all at once for a moment.

21 Let me refer you to Defendants' Exhibit Number 93, which I
22 guess we would move to admit.

23 (Defendants' Exhibit Number 93 offered into evidence.)

24 THE COURT: A defendants' exhibit? Surely they
25 have no objection to that, huh?

1 MR. WARNER: No.

2 THE COURT: Admitted without objection.

3 (Defendants' Exhibit Number 93 admitted into
4 evidence.)

03:29:31 5 Q. (By Mr. Edwards) All right. You have been to the
6 infirmary, correct?

7 A. Yes, sir.

8 Q. Okay. Now the infirmary, if you could describe it,
9 there is kind of a little square building where you might
10 go that is the waiting area, right?

11 A. Yes, sir.

12 Q. Okay. And there is some hallways, right? Long
13 hallways?

14 A. Yes, sir.

03:29:50 15 Q. Now, do you think realistically you could put 175
16 people in that room?

17 A. As far as -- no, sir. And as far as respite goes,
18 just the other day, sir, I was in the infirmary; and it
19 was full. And there was about six of us that went in for
03:30:08 20 respite. And they didn't have room for but three of us.

21 The other three had to stand up because all the other
22 offenders that were in there were in there for medical
23 treatment. The infirmary is just not a practical place
24 for respite on the average day at my unit because it is
03:30:23 25 being used for --

1 MR. EDWARDS: May I approach the witness, Your
2 Honor?

3 THE COURT: You may.

4 A. -- the regular medical treatment.

03:30:27 5 Q. (By Mr. Edwards) Your Honor -- Mr. Cole, would you
6 read what TDCJ says the offender capacity is for the
7 infirmary.

8 A. It's --

9 Q. That number right there.

03:30:35 10 A. -- 176, 176 offenders.

11 Q. Point six, right?

12 A. Right.

13 Q. You think maybe 10 or 15, right? Maybe 20?

14 A. Is that this number they are trying to say total?

03:30:51 15 MR. WARNER: Objection.

16 A. Total offenders at one time?

17 THE COURT: Is there an objection? I didn't hear
18 it.

19 MR. WARNER: I did object to leading.

03:30:59 20 Q. (By Mr. Edwards) I'm withdrawing the question.

21 How many offenders do you think you could put in the
22 infirmary, sir?

23 A. Sitting down?

24 Q. Let's start with sitting down.

03:31:07 25 A. Five, ten, 20 tops.

1 THE COURT: Does that include all the seating --
2 20 people would occupy all the seating in the infirmary?

3 THE WITNESS: Yes, sir. And that's -- that's
4 including adding some additional fold-out chairs that they
5 have.

6 THE COURT: That's 20 people including people who
7 are there for medical reasons as opposed to purely respite
8 reasons?

9 THE WITNESS: Yeah. Because if you are using it
10 for medical and it's full, there is really no place -- no
11 place for respite.

12 THE COURT: No. The 20-person capacity is all
13 counted?

14 THE WITNESS: Would be total. Total. Everybody.
15 That would be -- that would be my opinion.

16 THE COURT: Okay.

17 MR. EDWARDS: Could you pull up the lower admin
18 hallway, please.

19 Q. (By Mr. Edwards) This lower admin hallway that we
20 have heard a little bit about.

21 A. I have spent many days in it.

22 MR. EDWARDS: Okay. If we could see a photograph
23 of that. Do you know the exhibit number?

24 MR. MEDLOCK: It's part of two, Plaintiffs'
25 Exhibit 2.

1 THE WITNESS: That's it.

2 Q. (By Mr. Edwards) Okay. Is that an accurate photo of
3 the lower admin hallway?

4 A. That is correct.

03:32:26 5 Q. Okay. And one of the respite areas that they have
6 chosen is located next to administrative segregation?

7 A. Seg -- administrative segregation -- there is the
8 doorway. Do you see the little orange light coming out of
9 it at the very end of the hallway?

03:32:38 10 Q. Uh-huh.

11 A. That is administrative segregation right there.

12 Q. So the Court understands, what happens if someone has
13 to come out of administrative segregation?

14 A. Well, I have had that actually happen to me, sir.

03:32:49 15 Q. What happened to you?

16 A. I was in there with about six other offenders, and we
17 were standing right there. Lieutenant Perez came in and
18 gave us a direct order to get out.

19 Q. Okay.

03:32:58 20 A. And he said because we couldn't be in lower
21 administration in case there was a -- some type of
22 emergency or security concern in ad seg, we would be
23 blocking access to it and delaying their access to
24 security -- to ad seg.

03:33:14 25 Q. Okay. Is that an area that you have to stand in?

1 **A.** There is no place to sit.

2 **Q.** Okay. Do you want to take a guess what the offender
3 capacity, according to TDCJ for the -- for that
4 administrative hall is, according to TDCJ?

03:33:28

5 **A.** If we are stuck in there like sardines standing up,
6 probably 50.

7 **Q.** They wrote 59, sir.

8 **A.** I could see that. If we were standing shoulder to
9 shoulder like sardines, you could probably squeeze 59

03:33:42

10 people in there, yes, sir.

11 **Q.** Okay. And is -- is that your understanding of
12 respite, standing up like sardines, shoulder to shoulder?

13 **A.** No, sir, it's not.

14 **Q.** Okay. Would anyone go if they were standing shoulder
15 to shoulder?

03:33:51

16 **A.** No, sir, they wouldn't.

17 **Q.** Okay. Go to the barbershop.

18 **A.** I have spent many a day in there, also.

19 **Q.** How many people can you put in the barbershop in
20 respite?

03:34:10

21 **A.** 11.

22 THE COURT: Why have you spent many days in the
23 barbershop?

24 THE WITNESS: Because that's the main place we go
25 for respite. That's the very first place they put us.

03:34:16

1 That's where we start off. It's right next to the
2 searcher's desk, and that's the start of our little
3 Ping-Pong that we go through every day. It starts right
4 there.

03:34:28

5 **Q.** (By Mr. Edwards) They put 15. But the most you have
6 ever seen in there is 11 or 10?

03:34:40

7 **A.** There are only places to sit 11 people. I would also
8 like to also point out the two barber chairs. If you are
9 there for respite, you are not allowed to sit in those
10 chairs. I have been put out of those chairs several times
11 by Captain Marshall. He has told me, You can't sit there.
12 You can only sit on the benches. So those two chairs
13 cannot be used for respite.

03:34:53

14 **Q.** Let's talk about the concept of wellness checks. Do
15 you recall testimony about that?

16 **A.** Yes, sir, I do.

17 **Q.** Okay. Have you ever seen a wellness check done on an
18 inmate that lasted 30 full seconds to a minute by a
19 correctional officer?

03:35:07

20 **A.** No, sir.

21 **Q.** The wellness checks -- wellness, in quotes, checks are
22 no different than the checks that happen during the
23 winter?

24 **A.** That's correct.

03:35:29

25 **Q.** A couple of questions. I think I know the answer, but

1 let's see. During -- have you ever been nudged or woken
2 up at night as part of one of these, quote-unquote,
3 wellness checks?

4 **A.** I have.

03:35:43

5 **Q.** Have you ever been asked a question?

6 **A.** Are you breathing? Are you alive? That's the main
7 questions. Are you alive? That's the main one.

8 **Q.** Okay. And they move on after that?

9 **A.** That's correct.

03:35:54

10 **Q.** No more than five seconds?

11 **A.** If that.

12 **Q.** Okay. Have you ever been asked, Are you hot?

13 **A.** No, sir.

14 **Q.** Have you ever been asked, Have you been drinking
15 water?

03:36:03

16 **A.** No, sir.

17 **Q.** Have you ever been asked, Do you think you might need
18 medical attention?

19 **A.** No, sir.

03:36:11

20 **Q.** Do you know if you were on the so-called heat
21 vulnerable list that gets you access to these wellness
22 checks, sir?

23 **A.** To my knowledge, I think I am on that list; but I
24 wasn't on it until after the lawsuit. I tried to get on

03:36:26

25 it, but they wouldn't put me on it.

1 Q. Okay. Before the lawsuit, you weren't on any sort of
2 wellness checklist?

3 A. They refused to put me on it.

4 Q. After the lawsuit, you have been put on one?

03:36:35 5 A. That is correct.

6 Q. Okay. You have also seen other inmates get these
7 nudges or checks, right?

8 A. Yes, sir.

9 Q. Close enough to sometimes hear what the officers may
03:36:43 10 say?

11 A. Right.

12 Q. Have you ever --

13 MR. WARNER: Objection. Leading.

14 THE COURT: Well, that's not leading. I'll allow
03:36:50 15 that.

16 Q. (By Mr. Edwards) Have you ever heard any of the
17 officers say to any of the other men, Are you feeling hot?

18 A. No, sir.

19 Q. Are you sick?

03:36:58 20 A. No, sir.

21 Q. Do you need medical attention?

22 A. No, sir.

23 Q. Have you been taking -- drinking enough water?

24 A. No, sir.

03:37:05 25 Q. Do you know of any reason why there couldn't be

1 training for the correctional officers on exactly that
2 topic, sir?

3 **A.** I don't see -- I don't think it would be that
4 difficult to do it.

03:37:16 5 **Q.** Okay. Now, back to the heat that you experienced.
6 Okay. Does it affect your ability to breathe?

7 **A.** That's the main problem I have when it gets extremely
8 hot is breathing.

9 **Q.** Would you describe in your own words how your
03:37:39 10 breathing is affected and whether it's a day-to-day
11 occurrence during the summer?

12 **A.** Yes, sir. When it's extremely hot, I always have a
13 hard time breathing. It feels like I'm suffocating.
14 That's the best way to describe it. It just feels like
03:37:52 15 you are sucking in air, but you are not sucking in air.
16 You have the sensation of suffocating.

17 **Q.** Have you ever been in any facility that's as hot as
18 the Pack Unit?

19 **A.** No, sir.

03:38:05 20 **Q.** Do you have any physical symptoms when you are forced
21 to endure or when you live in the Pack area housing unit?
22 Have you ever suffered any sort of injuries as a
23 consequence of the heat?

24 **A.** I have -- I think I do every day. I mean, if you go
03:38:19 25 by what they claim are the symptoms for heat stress or

1 heat exhaustion, I think I suffer the heat -- some type of
2 heat-related injury just virtually ever day.

3 **Q.** Do you ever suffer headaches in the summer?

4 **THE COURT:** Have you ever what now?

03:38:33

5 **MR. EDWARDS:** I'm sorry.

6 **Q.** (By Mr. Edwards) Have you ever suffered headaches in
7 the summertime?

8 **A.** I don't get headaches. No, sir, I don't.

9 **Q.** What about dizziness?

03:38:40

10 **A.** Yes, sir. I get dizzy quite a bit.

11 **Q.** Do you ever get dizzy in the winter as compared to the
12 summer months?

13 **A.** I can't say I get dizzy in the summertime at all.

14 **Q.** What about nausea? Do you ever experience that?

03:38:52

15 **A.** I feel like I'm nauseated sometimes, also, yes.

16 **Q.** Is that only in the summer months?

17 **A.** Basically in the summer months more than any other
18 time.

19 **Q.** Do you ever feel shortness of breath?

03:39:01

20 **A.** Yes, sir.

21 **Q.** Is that more often in the summer months when it's hot,
22 or is that at all times?

23 **A.** It's always -- most of my debilitating conditions
24 affect me in the summertime versus the wintertime.

03:39:14

25 **Q.** Okay. What about sleeping? Does the heat affect your

1 ability to sleep?

2 **A.** Yes, sir, it does in many, many, many ways.

3 **Q.** Would you tell the Court how?

4 **A.** Well, first of all, it's not only the heat that I have

03:39:26

5 to deal with when I try to sleep at night, Your Honor.

6 It's also some of the remedial measures that they have in

7 place.

8 See, on my dorm they have installed these real high

9 intensity fans that are extremely loud because of the

03:39:41

10 electricity of these motors. And last year they installed

11 an additional one.

12 So not only do I have to deal with the heat at night

13 to try to sleep, I also have to deal with these

14 high-intensity fans with the noise level.

03:39:54

15 **THE COURT:** Well, are you better off with the

16 fans or without them?

17 **THE WITNESS:** I would say I would be better off

18 with them because it helps circulate the air, but there

19 are times that it's so hot that I would just be better

03:40:03

20 with them off.

21 **THE COURT:** Because they are just blowing hot

22 air?

23 **THE WITNESS:** They are just blowing hot air. I

24 understand at certain temperatures the fans can be

03:40:09

25 detrimental. Not only just the fans but also the remedial

1 measure, they open up this exit door that's up high in the
2 picket where the officers walk. Now, this door has no
3 screens on it. So in the evening time and at night we
4 have got just all kinds of bugs, mosquitoes, beetle bugs
5 just flying in the door unabated.

03:40:26

6 And not only that, we have to deal with the window
7 screens that have holes in them. And we have -- there are
8 so many war stories about the window screens, it's unreal.

9 So it's not just the heat I have to deal with trying
10 to sleep, it's some of the remedial measures they have in
11 place to prevent me from getting hot that prevent me from
12 sleeping.

03:40:37

13 **Q.** (By Mr. Edwards) The bugs, is that something that is
14 common in the summertime?

15 **A.** Everybody is going to tell you the same story: the
16 little black bugs and the little green bugs. Now, they
17 don't have a bite that is as intense as an ant or a bee,
18 but they sting you and it's irritating, more than
19 anything.

03:40:48

20 **Q.** Does it hurt?

03:41:01

21 **A.** Yes. It's a bite.

22 **Q.** Does the heat affect your ability to concentrate?

23 **A.** All the time. Especially when I'm trying to type.
24 Sometimes I just can't even remember the simple spelling
25 of words.

03:41:11

1 Q. Well, I mean, does it affect -- I mean, does it affect
2 all areas like reading, watching TV, et cetera?

3 A. It can.

4 Q. Is it easier to do those activities in the other
5 months?

6 A. Yes, it is. As a matter of fact, I don't have
7 problems at all in the winter months.

8 Q. Okay. Does the heat cause you to feel fatigued?

9 THE COURT: He has already said that. He has
10 already testified to that.

11 A. Right.

12 Q. (By Mr. Edwards) Oh, and not to belabor, what do you
13 see other inmates doing to protect themselves from the
14 heat or deal with the heat, sir?

15 A. My dorm alone I -- there are fellows that are right
16 now probably laying on their boxes with a wet towel on
17 their chest and they have their fan sitting in their laps
18 with the fan blowing directly on them trying to stay cool.

19 Several guys in my dorm will be on the floor right now
20 trying to stay cool.

21 And everybody wets their T-shirts down and wets their
22 towels down and they try to stay cool.

23 THE COURT: You have been at TDCJ for 23 years
24 plus?

25 THE WITNESS: That is correct.

1 THE COURT: And six years in the Pack Unit?

2 THE WITNESS: That is correct.

3 THE COURT: Is Pack Unit better than, worse than
4 or the same as other places you have been housed?

03:42:26 5 THE WITNESS: In many a ways, it's pretty much
6 all the same to me.

7 MR. EDWARDS: Do you have anything further, Your
8 Honor?

9 THE COURT: I don't need anything.

03:42:44 10 Q. (By Mr. Edwards) Okay. I want to talk to you about
11 you have actually been diagnosed by the doctors at UTMB
12 with heat exhaustion from the Pack Unit, correct?

13 A. That is correct.

14 Q. Okay. That was recorded before this suit was filed,
03:43:00 15 correct?

16 A. Right.

17 Q. Okay. Now, I want to have a better understanding of
18 -- the windows in your dorm open, correct?

19 A. Yes, sir.

03:43:11 20 Q. They are -- they are -- it's not really mesh. It's
21 kind of like some sort of metal screen, right?

22 A. Right. They weren't designed for -- for use for
23 window screens, no.

24 Q. How much of this pen could fit through the grating?

03:43:19 25 MR. EDWARDS: May I approach, Your Honor?

1 THE COURT: You may.

2 A. Well, my eyes are terrible. My eyes are terrible.

3 But you can -- the first -- well, you see the clear
4 plastic? All that part will go in there, from the tip to
5 the little clear plastic part.

6 Q. (By Mr. Edwards) From here I am pointing at here or
7 up here?

8 A. You could go up here. But the picture that you have,
9 it really illustrates it. You could actually see how big
10 the holes are.

11 THE COURT: What is the screen for if it doesn't
12 keep things out?

13 THE WITNESS: To keep us from throwing trash out
14 and stuff like that.

15 THE COURT: Okay.

16 THE WITNESS: See, originally, when that place
17 was originally designed, it had screens that we could
18 actually remove ourselves, Your Honor. And a few years
19 back, some genius decided to bolt those screens in. Once
20 they bolted those screens in, offenders couldn't clean
21 them anymore.

22 THE COURT: Well, was it actually a problem that
23 people were throwing trash out? I can see the point.

24 THE WITNESS: Yes. But, also, we also would take
25 them out to clean them, to clean the screens. The screens

are dirty all the time. When they checked -- when they bolted them down, offenders were no longer able to clean the screens. So as we tried to clean them, we started damaging them.

And the reason why they put that heavy wire mesh in is because every time they would put a new screen in, within a few days it would be torn out again. But that was done because some -- because some genius decided to bolt up the original designed screens down. Because for 20 years, those screens could be removed without being damaged; and they were. And the screens did not start getting damaged --

THE COURT: The problem was people throwing trash out of them.

THE WITNESS: Well, trash and also being able to pull them out and clean the deals. But it wasn't really trash we were throwing out. It was more like feeding the birds. That was one of the main things we were doing, feeding the animals and stuff, throwing food out to feed the animals. So it wasn't really throwing trash out.

Q. (By Mr. Edwards) Sir, do you know of any reason why they couldn't put a mesh screen over that as it exists now?

A. No reason why you couldn't.

Q. That would solve the bug problem, wouldn't it?

1 A. That would solve the bug problem.

2 Q. All right. The Power Breezers, are you in a dorm with
3 the Power Breezers?

4 A. Yes, sir, I am.

03:45:22 5 Q. Does it help cool down the dorm?

6 A. It doesn't do anything.

7 Q. Have you walked up to them and experienced them?

8 A. I have. And if you -- it shoots a little mist out.

9 So common sense will tell you if you are in front of a fan
03:45:36 10 and there is a light mist coming out, you are going to
11 feel the cooling effect right there. But if you step back
12 three feet, you don't feel any difference at all. It's
13 just a regular fan.

14 Q. Okay. I want to thank you. Oh -- yeah.

03:45:49 15 MR. EDWARDS: Nothing further, Your Honor. Thank
16 you.

17 **CROSS-EXAMINATION**

18 BY MR. WARNER:

19 Q. Good afternoon, sir.

03:46:13 20 A. Good afternoon to you.

21 Q. So let me start here. There has been a great deal of
22 improvement in the past few years in the measures that are
23 taken at the Pack Unit to protect inmates from heat,
24 correct?

03:46:31 25 A. Yes, sir.

1 Q. Okay. And you testified that you can access ice water
2 24 hours a day, seven days a week now?

3 A. 365 days a year.

4 Q. Well, that's great.

03:46:48

5 A. Yes, sir, it is.

6 Q. And there are more fans than there used to be?

7 A. That is correct.

8 Q. Even though, in some cases, you are not a big advocate
9 for the fans?

03:47:00

10 A. To my understanding, even TDCJ says they are
11 detrimental when the temperature reaches a certain degree.

12 Q. And the respite program has been implemented or
13 expanded, one of those, right?

14 A. That's correct. But still, no one is using it.

03:47:17

15 Q. Well, you are?

16 A. Yes. But the only reason why I'm using it is because
17 you see these hired guns we have here today, they are
18 backing me up. That's the only reason why I have the
19 confidence to be here today.

03:47:28

20 Q. Let me ask you --

21 THE COURT: Just a second. Are you finished with
22 your answer or not?

23 THE WITNESS: Yes, sir.

24 THE COURT: Did you finish your answer, sir?

03:47:35

25 THE WITNESS: Yes, sir.

1 MR. WARNER: Object to the narrative as
2 nonresponsive.

3 Q. (By Mr. Warner) You use the respite areas pretty much
4 every day; is that correct?

03:47:47

5 A. Every single day, sir.

6 Q. Okay. You talked a little bit about the showers.
7 Let's talk about that before we go on to respite. You
8 know that cool-down showers are called out for everyone at
9 least twice a day, correct?

03:48:11

10 A. Yes, sir, it is.

11 Q. Okay. And at that time, those times during the day,
12 every dorm is reached out to; and if they want to go take
13 a cold shower, they can do so, correct?

14 A. That is correct.

03:48:27

15 Q. All right. But you do not think that you are free to
16 ask for a cold shower other times of the day; is that
17 right?

18 A. We are not -- we are not free -- we don't have
19 unabated access to showers every day. No, sir, we do not.

03:48:46

20 Q. Sir, let me just ask you to answer the question that I
21 ask.

22 A. We do not have unabated access to showers on our unit.

23 THE COURT: Okay. Is there a fixed time every
24 day you do have access?

03:48:58

25 THE WITNESS: That is correct.

1 THE COURT: What is the time?

2 THE WITNESS: We normally shower in the mornings
3 about between 6:00 and 8:00. And then, sometimes they
4 will run the cool-down showers around 12:00 and then run
5 another one about 7:30 or 8:00 at night.

6 THE COURT: So three times you can go?

7 THE WITNESS: That is correct. But it's not
8 unabated. You have to go those times and those times
9 only.

10 Q. (By Mr. Warner) Have you yourself asked for a
11 cool-down shower at a different time?

12 A. No, sir, I have not.

13 Q. So you have never been denied because you have never
14 asked?

15 A. That is correct.

16 Q. Let's talk about respite.

17 A. Okay.

18 Q. You, obviously, are not in charge of the respite
19 program, correct?

20 A. That is correct.

21 Q. All right. And you are not in charge of staffing it,
22 right?

23 A. No, sir, I am not.

24 Q. You are not in charge of the areas of the prison that
25 are air-conditioned?

1 A. No, sir, I'm not.

2 Q. All right. You are not in charge of securing the
3 safety of inmates?

4 A. No, sir.

03:50:05

5 Q. Okay. You are not in charge of emergency response at
6 the present?

7 A. No. No, sir.

8 Q. You don't have any authority whatsoever to determine
9 who can use respite, right?

03:50:21

10 A. I don't have -- no, sir, I don't.

11 Q. Or when they can use it?

12 A. No, sir, I don't.

13 Q. Or how the respite program is to be implemented,
14 right?

03:50:32

15 A. That's correct.

16 Q. Or how any space in the prison is to be used, correct?

17 A. That is correct.

18 Q. All right. And you haven't done any analysis of how
19 many people could be accommodated in respite in any given
20 area of the prison?

03:50:56

21 A. Well, based on my knowledge of the unit, yes, I have.

22 Q. You have an opinion?

23 A. That's what it would be, yes.

24 Q. But you are not responsible for making that happen?

03:51:05

25 A. Oh, no, I'm not.

1 Q. You talked a little bit about medical, and I don't
2 think we saw a photo of medical. How many patient rooms
3 do you think there are in the infirmary?

03:51:33

4 A. There is one -- not counting the x-ray room, I think
5 there is three, maybe four at tops, four tops.

6 Q. You think there are four patient rooms in the entirety
7 of the infirmary?

03:51:45

8 A. Well, it depends on what you mean when you say
9 "patient rooms." You mean permanent patient rooms or
10 where they can see patients on a daily basis?

11 Q. Let me back up and ask it this way: How many rooms
12 total do you think are in the infirmary?

13 A. One, two, three, four -- maybe about ten; but I'm
14 guessing. I'm just guessing.

03:51:58

15 Q. So you don't know the answer to how many rooms there
16 are in the infirmary?

17 A. I sure don't.

18 Q. There is a hallway in the infirmary that sort of forms
19 a U, right? You walk down and you turn left and you come
20 back?

03:52:10

21 A. That's correct.

22 Q. All right. And there are rooms to the right and left
23 of the hallway on each side?

24 A. That is correct.

03:52:16

25 Q. And there is rooms in the back?

1 A. Yes, sir.

2 Q. Okay.

3 A. And I would like to point out when I made my statement
4 about how many offenders have -- could be put in there, I
5 was only referring to the waiting --

6 Q. Sir, what I'm going to do is ask you not to --

7 MR. EDWARDS: Your Honor, if I might. I have
8 repeatedly in this courtroom been told that the witness is
9 sworn under oath to tell the truth.

10 THE COURT: That's right. We're going to let him
11 answer. We're going to let him answer. The question was
12 there is rooms in the back.

13 You said, I would point out when I made my statement
14 about how many defendants could be put there, I was only
15 referring to the way --

16 THE WITNESS: To the waiting area where offenders
17 are allowed to go on a daily basis.

18 THE COURT: The waiting area?

19 THE WITNESS: The waiting area. That's what I
20 said. If they want to use it for respite, that's the only
21 place they are going to be putting us was in this waiting
22 area. I was referring to the number based on just the
23 waiting area, not the entire size of the infirmary itself.

24 Q. (By Mr. Warner) All right. So -- and when you say a
25 "waiting area," there is a waiting area up in front of

1 that long hallway, right?

2 **A.** Yes, sir.

3 **Q.** And people sit there and they wait and see the
4 physician?

03:53:21 5 **A.** Yes, sir.

6 **Q.** And then when they go to see the physician or whoever,
7 they walk down the hallway; and they go to a room?

8 **A.** That is correct.

9 **Q.** And the size of the overall infirmary is much larger
03:53:32 10 than the waiting room?

11 **A.** That is correct.

12 **Q.** All right. And there are many rooms back there that
13 you haven't accounted for, correct?

14 **A.** That is correct.

03:53:38 15 **Q.** Again, you don't have any authority whatsoever to
16 determine which or any of those rooms can be used for
17 respite in any given circumstances, right?

18 **A.** But common sense would dictate, if you look in the
19 room, what it could be used --

03:53:53 20 **MR. WARNER:** Sir, I am going to ask you -- I'm
21 going to object to the answer as unresponsive.

22 **THE COURT:** Just a second. Do you have any
23 authority as to which rooms could be used for respite?
24 The question was: Do you have any authority whatsoever?

03:54:10 25 That question is not very well formulated. Why don't you

1 reask the question.

2 MR. EDWARDS: Your Honor, if this question is
3 seriously does this man have authority to determine who
4 could go in the waiting room --

03:54:23 5 THE COURT: Well, that's why I thought it didn't
6 make a whole lot of sense. Please ask another question.

7 Q. (By Mr. Warner) You can't determine whether people
8 use that area for respite, right?

9 A. No, sir, I cannot.

03:54:42 10 Q. Someone else -- someone in authority determines that?

11 A. That is correct.

12 Q. All right. So when you say that it can't be used for
13 respite, that is a guess?

14 A. I'm just saying common sense would tell me if you have
03:54:54 15 got computers in the room, if you have got desks in the
16 room, you have got examining tables in the room, in order
17 for you to effectively use that for a respite area, you
18 would have to move all that out.

19 Q. All right. But you don't know whether that can be
03:55:03 20 done?

21 A. I'm not saying it can't be used.

22 Q. So you don't know?

23 A. But on a practical basis, it couldn't be used, no,
24 sir.

03:55:10 25 Q. So you don't know whether that could be done?

1 **A.** No. I just gave you my answer, sir.

2 **Q.** Likewise, with other respite areas, you don't have any
3 insight into the process by which those decisions are made
4 about whether they can be used for respite, right?

03:55:25 5 **A.** How they are made, no, sir, I do not.

6 **Q.** Okay. I apologize. I don't have the number. We need
7 that chart up.

8 MR. EDWARDS: It's Plaintiffs' Exhibit 93. I'm
9 sorry. Defendants' Exhibit Number 93.

03:55:47 10 **Q.** (By Mr. Warner) I have got it. So we spent some time
11 on this chart. This chart has, essentially, four columns,
12 right?

13 **A.** Location, square footage, offender amount and
14 capacity, right.

03:56:09 15 **Q.** Right. And on the left-hand column, location of
16 respite area, this just lists series of locations,
17 correct?

18 **A.** That is correct.

19 **Q.** All right. And the second column from the left, total
03:56:19 20 square feet, just gives the number for how large it is?

21 **A.** That would be unabated; is that correct? That would
22 be unabated square footage, or would that be with
23 computers and file cabinets and phones and all other
24 things they have in these areas?

03:56:32 25 **Q.** All I'm asking you is what the document says.

1 **A.** That's what I'm asking you. Is it unabated?

2 THE COURT: There is no need for this jousting.
3 Tell me what area you are asking about the square footage
4 of.

03:56:45 5 MR. WARNER: Your Honor, what I am asking about
6 is the document.

7 MR. EDWARDS: The document speaks for itself,
8 Your Honor. If he is just asking him to say whether it
9 says 15 feet, it says 15 feet.

03:56:54 10 THE COURT: Is that what you are asking is just
11 to confirm what is on the document?

12 MR. WARNER: It was the beginning, Your Honor. I
13 am going somewhere with it.

14 THE COURT: Go ahead and ask your next question
03:57:03 15 then.

16 MR. WARNER: All right. Thank you.

17 **Q.** (By Mr. Warner) You don't know how this document was
18 created, do you?

19 **A.** I have never seen it before in my life.

03:57:15 20 **Q.** All right. And you don't know what its purpose is?

21 **A.** I guess it's to convince the courts that you have
22 enough square footage to house all the offenders on our
23 unit in air-conditioning at one time.

24 **Q.** But you don't know whether it is?

03:57:25 25 **A.** I'm assuming that's what it is for.

1 THE COURT: Okay. You don't know. That's fine.

2 THE WITNESS: I don't know. Pack Unit respite
3 breakdown.

03:57:52

4 Q. (By Mr. Warner) And you don't know whether -- you
5 don't know where the numbers on the right-hand column come
6 from, do you?

7 A. The offender capacity?

8 Q. Yeah.

03:58:02

9 A. I would assume that you would divide the square
10 footage into the total square footage, and that would give
11 you the basic idea of what the capacity would be. I'm
12 looking at 15 divided by 300. That's what it appears to
13 be anyway.

03:58:16

14 Q. And for square feet per offender, this document lists
15 15 for every entry, correct?

16 A. That is correct.

17 Q. So that appears to be a rule of some kind that's been
18 applied to this document?

03:58:24

19 MR. EDWARDS: I have to object that that calls
20 for speculation and assumes facts not in evidence.

21 THE COURT: If you have a basis for that and he
22 would know, go ahead and ask that.

03:58:38

23 MR. EDWARDS: My real objection is I don't think
24 there is a rule. So the suggestion even to the Court, I
25 have an issue with it.

Cross Examination of Keith Cole

1 THE COURT: He is just asking if he knows what
2 the rule is that's been applied to this document. I would
3 gather you have no way of knowing that, right?

4 THE WITNESS: (Shaking head side to side.)

03:58:47 5 THE COURT: Let's move on.

6 Q. (By Mr. Warner) You don't know whether there has been
7 any additional analysis of how many people could fit into
8 these various areas in different varying circumstances, do
9 you?

03:59:01 10 A. Again, like I said, common sense dictates that I can
11 estimate how many people could fit in that lieutenant's
12 office right now. And I guarantee you that you can't fit
13 14 offenders in that lieutenant's office, unless you stack
14 them in like sardines, and you still couldn't get 14
03:59:19 15 offenders in that lieutenant's office right now and I
16 challenge you to do so.

17 THE COURT: Okay. All right. That's enough.

18 Q. (By Mr. Warner) My question is really: You don't
19 know whether the authorities at the Pack Unit have looked
03:59:33 20 at, for example, the education building and used these
21 numbers to reach some other conclusion, do you?

22 A. I have no idea, sir.

23 Q. No idea. Okay. So this is just raw data, correct?
24 Someone would have to apply this to a real world
03:59:52 25 situation, correct?

1 **A.** Absolutely. Pack Unit respite breakdown.

2 **Q.** And the process of applying this data and these spaces
3 to a real world situation would depend very much on what
4 was going on, right?

04:00:05

5 THE COURT: I think we have moved beyond the core
6 competence of this witness. Let's get to a different line
7 of questions.

8 MR. WARNER: All right, Your Honor. Thank you.

04:00:21

9 **Q.** (By Mr. Warner) I want to ask you, Mr. Cole, about
10 something you said about the Pack Unit. Do you recall
11 when the Court asked you whether -- how the Pack Unit
12 compared to other prisons that you have been at?

13 **A.** Yes, sir, I do.

04:00:45

14 **Q.** Okay. And your testimony was that it's pretty much
15 the same; is that right?

16 **A.** That's correct.

17 **Q.** Okay.

18 MR. WARNER: I'm sorry, Your Honor.

19 THE COURT: It's all right.

04:01:27

20 **Q.** (By Mr. Warner) So you can't really differentiate
21 between how the staff treat inmates at the Pack Unit as
22 compared to other prisons that you have been at?

23 **A.** Depending on what you mean by that. You know, what
24 way? There is a lot of things that staff do. You know,

04:01:47

25 to give you an example --

Cross Examination of Keith Cole

1 THE COURT: In terms of the living conditions,
2 the heat and water, things like that, is there any
3 difference or is it all pretty similar?

4 THE WITNESS: I can't really say because I have
04:01:57 5 never been on a unit prior to this that had a respite
6 program or cool-down showers or any of the remedial
7 measures that we have now. So I really can't say.

8 THE COURT: So the remedial measures now are an
9 improvement over other places?

04:02:13 10 THE WITNESS: Yes, sir. Absolutely. Absolutely.

11 THE COURT: Okay. That's helpful.

12 Q. (By Mr. Warner) And that's great to know. I guess
13 what I would -- another thing I would like to ask is, you
14 know, what about the people? Is it really your view and
04:02:29 15 your testimony today that you can't draw a distinction
16 between how solicitous, how concerned the unit staff is at
17 the Pack Unit as compared to other prisons that you have
18 been in?

19 A. I really can't. What I can do is I can compare prior
04:02:51 20 to this lawsuit and what it is now on this unit. I can do
21 that.

22 Q. Okay. You gave a deposition in August of 2015, right?

23 A. Yes, sir, I did. Very extensive.

24 Q. All right. And in that deposition, just like you did
04:03:09 25 today here in court, you had to take an oath to tell the

1 truth, right?

2 **A.** Yes, sir, I did.

3 **Q.** And you did tell the truth?

4 **A.** To the best of my knowledge. I told, to the best of
04:03:16 5 my knowledge, the truth.

6 **Q.** All right. I'm going to invite your attention to a
7 couple of pages in your --

8 MR. EDWARDS: Excuse me. If he wants to say "Do
9 you recall testifying X" and get an answer from the
04:03:25 10 witness and properly impeach him, if it is impeachment
11 testimony --

12 THE COURT: Well, he hasn't heard yet. I think I
13 know where he is going. Let's see if he can get there.
14 If you want to point to a difference between what you
04:03:40 15 think he said then and what you think he said today, let's
16 do that.

17 MR. WARNER: I would like to invite his attention
18 to his deposition, Your Honor. That's all.

19 THE COURT: Okay.

04:03:49 20 MR. WARNER: Could we pull up Page 191 and 192 of
21 his deposition.

22 MR. EDWARDS: Your Honor, again, I don't think a
23 predicate has been laid to put a deposition up. I don't
24 want to overemphasize this; but I mean, I know you can
04:04:17 25 make the distinction. But I mean --

1 THE COURT: I'm not sure --

2 MR. WARNER: I wouldn't put it up in front of a
3 jury, Your Honor.

04:04:24

4 THE COURT: I'm not sure I understand your
5 objection.

6 MR. EDWARDS: That a proper predicate has not
7 been laid as to whether or not he -- I assume this is
8 impeachment.

9 THE COURT: I assume it is.

04:04:32

10 MR. EDWARDS: In order to impeach, my
11 understanding is you have to give the witness, "Do you
12 recall saying X, Y or Z?"

13 THE COURT: That's what he intends to do.

04:04:41

14 MR. WARNER: I intend to do so. I wouldn't put
15 this up if there were a jury in here. I'm just using it
16 instead of handing it to him.

17 THE COURT: Okay.

04:04:58

18 **Q.** (By Mr. Warner) Could you scroll up a little so we
19 could see that it is in fact. Okay. This is your
20 deposition --

21 **A.** Yes, it is.

22 **Q.** -- on August 26th, correct?

23 **A.** I remember talking about the McConnell Unit. You are
24 absolutely correct. Yes, I do.

04:05:04

25 **Q.** Okay. Great. So at the bottom here, if you'll turn

1 to the transcript that I have placed in front of you,
2 starting at Line 15 you are asked the question:

3 "Can you compare how the officers' professionalism at
4 the McConnell Unit compared to the officers'
5 professionalism here at the Pack Unit?"

6 **A.** Okay.

7 **Q.** And you answered:

8 "There is no comparison. It's pathetic over there,"
9 meaning the McConnell Unit.

10 **A.** Uh-huh.

11 **Q.** That's your testimony, right?

12 **A.** That is correct. But I was under the impression that
13 the question you asked me about the Pack Unit was in
14 regards to extreme heat conditions, you know. And I
15 clearly stated if you rolled it back and let me read what
16 it first says there.

17 It says that I was only there until May. I just
18 started -- it just started getting hot. But I was blessed
19 that I didn't have to be there when the heats were
20 extreme.

21 So in other words, when we're talking about comparing
22 Pack Unit with McConnell, I was under the assumption we
23 were talking about extreme heat conditions, which I wasn't
24 exposed to in the McConnell Unit, sir.

25 **Q.** So you were not --

1 **A.** I wasn't talking about extreme, about that. When we
2 were talking about the professionalism of the officers,
3 Pack Unit officers are way more professional than officers
4 over at McConnell; but they have to deal with a different
5 class and different style of offender over there.

04:06:14

6 THE COURT: Okay. That's good.

7 **Q.** (By Mr. Warner) That's fine. Thank you.

8 MR. WARNER: If I could have one moment, Your
9 Honor.

04:06:43

10 THE COURT: Yes.

11 MR. WARNER: Thank you. Just one more question,
12 Your Honor.

13 THE COURT: Yes, sir.

14 MR. WARNER: Thank you.

04:07:25

15 **Q.** (By Mr. Warner) I'll be very brief. When we were
16 discussing the chart earlier --

17 **A.** Yes, sir.

18 **Q.** -- and how much space is available for respite --

19 **A.** Yes.

04:07:33

20 **Q.** -- how many people could fit in --

21 **A.** Yes.

22 **Q.** -- you are assuming normal operating conditions,
23 right?

24 **A.** That is correct.

04:07:38

25 **Q.** All right. You don't have any idea how many people

1 could be accommodated if additional measures were taken?

2 **A.** Such as?

3 **Q.** Suspending operations.

4 **A.** Because that's what it would take. That's my point.

04:07:49

5 **Q.** I'm just asking. You don't have any idea what that
6 would -- how many people could be accommodated?

7 **A.** If you wanted to put 15 offenders in the lieutenant's
8 office, you would have to first move the computers and the
9 file cabinets and the desks. That's the only way you

04:08:02

10 could do it.

11 **Q.** So is the answer no?

12 **A.** Are you going to really remove computers out of these
13 offices?

04:08:10

14 THE COURT: That's good. We don't have any
15 redirect, do we?

16 MR. EDWARDS: No, Your Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you, sir.

19 THE COURT: Do we want to break for the day?

04:08:14

20 MR. EDWARDS: I think that that would be --

21 THE COURT: Okay.

22 MR. MEDLOCK: Your Honor, I think that we would
23 like to break for the day. Could we have an opportunity
24 to speak with the inmate witnesses who I don't think we
25 need to bring back tomorrow? I just need, like, ten

04:08:26

minutes to explain to them why their testimony might not be needed.

THE COURT: Do you have any objection to that?

MR. WARNER: No objection.

THE COURT: That's fine. Thank you all very much. Thank you.

(Proceedings concluded at 4:08 p.m. and continued on Day 2.)

Date: July 27, 2017

COURT REPORTER'S CERTIFICATE

I, Laura Wells, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Laura Wells

Laura Wells, CRR, RMR